TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~280~~ 89 10

JAMES ARMSTRONG, JONATHAN HYRE, AND JESSE CARNEY, PLAINTIFFS IN ERROR,

vs.

LOT M. MORRILL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED NOVEMBER 6, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 280.

JAMES ARMSTRONG, JONATHAN HYRE, AND JESSE CARNEY, PLAINTIFFS IN ERROR,

vs.

LOT M. MORRILL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

INDEX.

	Original.	Print.
Declaration	2	1
Demurrer	6	3
Order of district court transferring cause to circuit court	14	8
Cause redocketed in district court	16	9
Judgment of district court	21	11
Bill of exceptions	22	12
Map	22	13
Map	95	47
Map	96	48
Map	99	49
Map	100	50
Map	102	52
Map	103	54
Map	105	55
Map	111	57
Map	116	58
Agreement	147	71
Clerk's certificate	148	71
Writ of error	149	71
Bond	152	72
Citation and service	155	73

1 UNITED STATES OF AMERICA,
District of West Virginia, ss:

LOT M. MORRILL & OTHERS
vs.
JAMES ARMSTRONG & OTHERS. } Record in ejectment.

Pleas before the Honorable John J. Jackson, jr., judge of the district court of the United States for the district of West Virginia, at Charleston, on Thursday, the 29th day of April, A. D. eighteen hundred and sixty-nine, and the 93d year of the independence of the United States of America.

Be it remembered that heretofore, to wit, at a district court of the United States for the western district of Virginia, (now district of West Virginia,) held at Charleston, on Tuesday, the 21st day of April, 1857, came the plaintiff, Lot M. Morrill, by his attorney, and filed his declaration against the defendants, (James Armstrong, Jesse Carney, & Jonathan Hires,) with a notice in writing thereto subjoined, from the plaintiff to the said defendants, notifying them that the said declaration would be filed on the first day of the present term of this court, together with an affidavit thereto attached, and also a statement showing the amount of profits and damages which the plaintiff means to demand. Whereupon it appearing by the said affidavit that the said defendants have each been duly served with a copy of the said declaration and notice, and they not appearing, although solemnly called, it is ordered that unless they, having legal notice of this order, do appear here at
2 the next term of this court and plead to the said declaration, their default will be entered and judgment given for the plaintiff and a writ of possession awarded him.

Which declaration and notice, together with the affidavit thereto attached, are in the words and figures following, to wit:

Declaration.

Virginia, in the United States court for the western district of Virginia, holden at Charleston, in the county of Kanawha.

Lot M. Morrill, a citizen and inhabitant of the State of Maine, complains of James Armstrong, Jesse Carney, Jonathan Hires, and Henry O. Middleton, citizens and inhabitants of the State of Virginia, and of the judicial district aforesaid, of a plea in ejectment, for that on the fifteenth day of July, A. D. one thousand eight hundred and fifty-six, he was possessed in fee simple of a tract of land situate in the county of Jackson and State of Virginia, and within the judicial district aforesaid, containing fifteen hundred acres and bounded as follows: Beginning at a white oak and dogwood, corner to Savary De Valconlon's 17th surv'y; and thence, by lands of John Swan, south seventy-four degrees west four hundred and eighty poles, crossing a branch of the first left-hand fork of Mill Creek, to a black oak & beech; thence, by lands of John Allison, south sixty-three degrees east six hundred and eighty-five poles, to two white oaks; south forty-five degrees west one hun-
3 dred and fourteen poles, to an ash & gum; south forty degrees east thirty seven poles, to a dogwood; north sixty-four degrees east two hundred and ninety poles, to a white oak & dogwood; north forty degrees east twenty-eight poles, to two white oaks; thence north sixty degrees west five hundred and sixty-six poles, to the beginning;

being the same tract of land granted to Albert Gallatin, by the Commonwealth of Virginia, by patent bearing date the tenth day of February, A. D. 1786, and then lying in the county of Harrison, but now in the county of Jackson, and State aforesaid; and being so possessed thereof, the said defendants thereafter, to wit, on the eighth day of October, A. D. 1856, entered into the said premises and unlawfully withhold from him, the said plaintiff, the possession thereof, to the damage of the said plaintiff of four thousand dollars; therefore he sues, &c.

Second count.

And also for that on the fifteenth day of July, A. D. 1856, James Dundas and Benjamin Kugler, both of the State of Pennsylvania, were possessed in fee simple of a certain other tract of land, situate in the county of Jackson and State of Virginia, and within the judicial district aforesaid, containing fifteen hundred acres, with its appurtenances, and bounded and abutted as set out in the foregoing count; and being so possessed thereof, the said defendants, afterwards, to wit, on the eighth day of October, A. D. 1856, entered into the said premises, and unlawfully withhold from them, the said Dundas & Kugler, the possession thereof, to the damage of them, the said Dundas & Kugler, of
4 four thousand dollars; therefore they sue, &c.

A. I. BOREMAN,
Att'y for Pl'tffs.

Notice & statement of damages.

James Armstrong, Jesse Carney, Jonathan Hires, and Henry O. Middleton:

MESSRS.: Take notice that I will file the foregoing declaration in ejectment against you, in the United States court for the western district of Virginia, holden at Charleston, in the county of Kanawha, on the first day of the next term thereof. You also take notice that on the trial of the said action in ejectment, I will claim and demand against you $300 damages for 1,000 oak trees; $100 for 100 pine trees; $300 for 400 cords of oak bark; $200 for $400 cords of firewood—all cut, taken, and carried away by the defendant from the afore-mentioned premises. Also the further sum of $500, for the rents and profits of the said land which is in your possession as aforesaid. October 17th, 1856.

LOT M. MORRILL.

Affidavit of service.

VIRGINIA, *Jackson County, to wit:*

This day personally appeared before me, A. Dilworth, a justice of the peace in and for the county and State aforesaid, Charles Board, and made oath that on the 15th day of April, 1857, he delivered a copy of the within declaration and notice in ejectment to the within-named James Armstrong, Jesse Carney, and left a copy at the house of the within Jonathan Hires with his wife, and explained to his wife
5 the object of the notice and declaration in ejectment.

Given under my hand this 16th day of April, 1857.

A. DILWORTH, *J. P.*

Demurrers, & plea not guilty.

And at another day, to wit, at a district court of the United States

for the western district of Virginia, held at Charleston, on Wednesday, the 22d day of April, 1857, came the parties, by their attorneys, and thereupon the defendants demur generally to the plaintiffs' declaration and to each count thereof, in which demurrers the plaintiff joins; and the said defendants, for plea in this behalf, say that they are not guilty of unlawfully withholding the premises claimed by the plaintiff in the declaration; and of this they put themselves upon the country, and the plaintiff likewise. Whereupon the order entered in this cause on yesterday is set aside.

And at a court held as aforesaid, on Wednesday, the 23d day of September, 1857, came the parties, by their attorneys; and thereupon, on motion of the plaintiff, and for reasons appearing to the court, this cause is continued until the next term, but at his costs.

Order of survey.

And by consent it is ordered that Robert R. Riley, the surveyor of Jackson County, do go upon the land in controversy, upon such day as either party shall request, and survey and lay off the same, as either party shall require, (such party giving to the adverse party reasonable notice of the time and place of commencing said survey,) and return seven fair plats and reports thereof to this court. And that any one of the justices of Jackson County do then and there meet the said
6 surveyor and examine and take the depositions of such witnesses as may be produced by any of the parties, which depositions are to be returned with the said plats and reports. And the marshal of this district is to attend said survey, and remove force, if any shall be offered

Security required for costs.

And the defendants alleging that the plaintiff is a non-resident of the Commonwealth of Virginia, on their motion it is ordered that he do give security for such costs and damages as shall be awarded the defendants against him; and also for the fees due and becoming due to the officers of this court, with the clerk of this court, within sixty days; otherwise this suit shall be dismissed.

And at a court held as aforesaid, on Thursday, the 24th day of September, 1857, came the parties, by their attorneys; and thereupon, on motion of the plaintiff, the continuance entered in this cause on yesterday is set aside.

Demurrer to 1st count overruled.

And the demurrers of the defendants to the plaintiffs' declaration and to each count thereof, being argued and considered, the same, as to the said declaration and to the first count thereof, are overruled.

Demurrer to 2d count sustained.

And as to the 2d count of the said declaration, it seems to the court that the matters and things therein contained are not sufficient in law for the plaintiff to have and maintain his action against the defendants; the same is therefore held for naught.

Whereupon, on motion of the plaintiff, he hath leave to amend his declaration.

And at another day, to wit, at rules held in the clerk's office of the said court, at Charleston, on the first Monday in October, 1857, came the plaintiffs, Lot M. Morrill, James Dundas, and Benjamin Kug-
7 ler, by their attorney, and filed their amended declaration, together with the notice of such filing thereto attached; which amended declaration and notice are in the words and figures follow-following, to wit:

Amended declaration.

VIRGINIA, *to wit:*

In the United States court for the western district of Virginia, holden at Charleston, in the county of Kanawha.

Lot M. Morrill, a citizen of the State of Maine, and James Dundas and Benjamin Kugler, citizens of the State of Pennsylvania, complain of James Armstrong, Jesse Carney, Jonathan Hires, and Henry O. Middleton, citizens and residents of the State of Virginia and of the judicial district aforesaid, of a plea in ejectment. For this, that heretofore, to wit, on the first day of August, 1856, the said plaintiffs were possessed in fee simple of a certain tract of land situate in the county of Jackson, in the State of Virginia, and within the judicial district aforesaid, containing fifteen hundred acres, and bounded as follows, to wit: Beginning at a whiteoak and dogwood; thence south 74° west 480 poles, crossing a branch of the first left-hand fork of Mill Creek, to a black oak and beech; thence, by lands of John Allison, south 63° east 685 poles, to two white oaks; south 45° west 114 poles, to an ash and gum; south forty degrees east 37 poles, to a dogwood; north 64° east 290 poles, to a white oak & dogwood; north 40° east 28 poles, to two white oaks; thence north 60° west 566 poles, to the beginning.
8 And being so possessed thereof, the said defendants afterwards, to wit, on the 2d day of August, 1856, entered into the said premises and unlawfully withhold from them, the said plaintiffs, the possession thereof, to the damage of the said plaintiffs $4,000.

2d count.

And also for this that heretofore, to wit, on the third day of August, 1856, the said plaintiff, Lot M. Morrill, was possessed in fee simple of a certain other tract of land situate in the county of Jackson and State of Virginia, and within the judicial district aforesaid, containing fifteen hundred acres, and bounded by the same lines and corners as set forth in the preceding count in this amended declaration; and being so possessed thereof, the said defendants afterwards, to wit, on the fourth day of August, 1856, entered into the said premises and unlawfully withhold from the said plaintiff, Lot M. Morrill, the possession thereof, to the damage of the said Lot. M. Morrill $4,000.

3d count.

And also for this that heretofore, to wit, on the fifth day of August, 1856, the said plaintiffs, James Dundas and Benjamin Kugler, were possessed in fee simple of a certain other tract of land situate in the county of Jackson, and State of Virginia, and within the judicial district aforesaid, containing fifteen hundred acres, and bounded by the

lines and corners as set forth in the first count in this amended
9 declaration; and being so possessed thereof, the said defendants afterwards, to wit, on the 6th day of August, 1856, entered into the said premises, and unlawfully withhold from the said Dundas and Kugler the possession thereof, to their damage $4,000; wherefore the said plaintiffs bring their suit, &c.

A. I. BOREMAN,
Att'y for Plaintiffs.

Notice.

To James Armstrong, Jesse Carney, Jonathan Hires, and Henry O. Middleton:

GENTS: Take notice that we will file the foregoing amended declaration in ejectment against you in the United States court for the western district of Virginia, holden at Charleston, in the county of Kanawha, at rules to be holden for said court, at the clerk's office thereof, on the first Monday in October, 1857.

Yours, &c.,

LOT M. MORRILL.
JAMES DUNDAS.
BENJAMIN KUGLER.

Cause docketed by consent.

And at the same rules came also the defendants, James Armstrong, Jesse Carney, Jonathan Hires, and Henry O. Middleton, by their attorney, and by consent this cause was docketed.

Plea not guilty.

And at another day, to wit, at a district court of the United States for the western district of Virginia, held at Charleston, on Wednesday, the 21st day of April, 1868, came the parties, by their attorneys,
10 and thereupon the defendants, for plea, say that they are not guilty of unlawfully withholding the premises claimed by the plaintiffs in the new counts of the declaration; to which plea the plaintiffs reply generally, and put themselves upon the country, and the defendants likewise. And the defendants filed with the papers in this cause an agreement in writing, waiving, on their part, the making of any survey by the plaintiffs, and this cause is continued until the next term.

And at a district court held as aforesaid on Thursday, the 23d day of September, 1858, came the parties, by their attorneys.

Cause continued.

And thereupon, on motion of the plaintiffs, and for reasons appearing to the court, this cause was continued until the next term, but at their costs.

Depositions opened.

And at a court held as aforesaid on Thursday, the 19th day of April, 1859, on motion of the plaintiffs, by their attorney, ordered, that the clerk of this court do now open a package of depositions, taken in this

cause, and received by him under seal, and filed with the papers. And the same is done accordingly.

R. Park to execute survey.

And at a court held as aforesaid on Monday, the 25th day of April, 1859, by consent of parties, by their attorneys, it was ordered that the survey heretofore directed in this cause to be executed by Robert Riley, surveyor of Jackson County, be executed by Robert Park, a surveyor, in the room of the said Riley.

Cause continued.

And at a court held as aforesaid on Wednesday, the 18th day
11 of May, 1859, for reasons appearing to the court, this cause was continued until the then next term.

Cause continued.

And at a court held as aforesaid on Wednesday, the 21st day of September, 1859, came the parties, by their attorneys; and thereupon, on motion of the plaintiffs, this cause was continued until the then next term, but at their costs.

Cause continued.

And at a court held as aforesaid on Saturday, the 21st day of April, 1860, came the parties, by their attorneys; and thereupon, on motion of the plaintiffs and for reasons appearing to the court, this cause was continued until the ensuing Tuesday, at the costs of the plaintiffs.

Cause continued.

And at a court held as aforesaid on Monday, the 23d day of April, 1860, on motion of the plaintiffs, by their attorney, and for reasons appearing to the court, this cause was continued until the next term, but at their costs.

Leave to file new count or counts.

And at a court held as aforesaid on Monday, the 22d day of April, 1861, on motion of the plaintiffs, by their counsel, leave is given them to amend their declaration by adding a count or counts on the title of William M. Tilghman, a citizen of Pennsylvania, to be filed in the clerk's office of this court, with the papers, in 60 days from this day.

And at another day, to wit, on the 19th day of June, 1861, came the plaintiffs and filed in the clerk's office of said court, in the papers in
this cause, their amended fourth count to their declaration,
12 which said count is in the words and figures following, to wit:

Fourth count.

And for this that William M. Tilghman, pl'tiff, a citizen of the State of Pennsylvania, complains of the said James Armstrong, Jesse Carney, Jonathan Hires, and Henry O. Middleton, defendants, all

citizens of the State of Virginia, and resident within the western judicial district thereof, aforesaid, of a plea in ejectment, for that the said Tilghman, heretofore, to wit, on the 7th day of August, 1856, was possessed in fee simple of a certain tract or parcel of land situate in the county of Jackson and State of Virginia, and within the judicial district aforesaid, containing fifteen hundred acres, and bounded and abutted as set forth and described in the first count of the amended declaration herein; and the said plaintiff, Tilghman, being so possessed thereof, the said defendants afterwards, to wit, on the 8th day of August, 1856, entered into the said premises, and unlawfully withhold from him, the said plaintiff, the possession thereof, to his damage of $4,000; and therefore he sues, &c.

PARKS & FRY.

Cause continued.

And at another day, to wit, at a court held as aforesaid on Tuesday, the 15th day of October, 1861, for reasons appearing to the court it was ordered that this cause be continued until the next term, but at the costs of the plaintiffs.

Cause continued.

And at a court held as aforesaid on Friday, the 2d day of May, 1862, for reasons appearing to the court, this cause was continued until the next term.

13 *Cause continued.*

And at a court held as aforesaid on Thursday, the 21st day of April, 1864, on motion of the plaintiffs and for reasons appearing to the court, this cause was continued until the next term, but at the costs of the plaintiffs.

Cause continued.

And at a court held as aforesaid on Thursday, the 20th day of April, 1865, for reasons appearing to the court it was ordered that this cause be continued until the next term, but this continuance is at the costs of the plaintiffs, and that this cause would not be continued at the next term, for the want of counsel, by the said plaintiffs.

Cause continued.

And at a court held as aforesaid on Thursday, the 21st day of September, 1865, for reasons appearing to the court, this cause was continued until the next term.

Sub. duces tecum ordered.

And at a court held as aforesaid on Friday, the 20th day of April, 1866, on motion of the plaintiffs, by their attorney, it was ordered that the recorder of Mason County be summoned to appear here forthwith, with all the land-books of the commissioner of the revenue for said Mason County, from the year 1811 to the year 1832, both inclusive, now on file in his office. And that the recorder of Jackson County be summoned to appear here forthwith, with all the land-books of the commis-

sioner of the revenue for said Jackson County, from the formation of said county to the year 1838, inclusive; also the land-books of said commissioner of the revenue for the year 1845, now filed in his office.

14 *Cause continued.*

And at a court held as aforesaid on the 21st day of April, 1866, on motion of the plaintiffs, by their attorney, and for reasons appearing to the court, this cause was continued until the next term, at the costs of the plaintiffs.

Cause transferred to circuit court.

And at a court held as aforesaid on Thursday, the 20th day of September, 1866, on motion of the plaintiffs and for reasons appearing to the court, it was ordered that this cause be transferred to the circuit court of the United States sitting at Parkersburg, there to be docketed, and proceeded in according to law; and it was further ordered that the clerk of this court collect and take the papers in this cause to the court at Parkersburg.

The following is a copy of the transcript of the proceedings had in this cause in the said circuit court, to wit:

"UNITED STATES OF AMERICA, *ss:*

"LOT M. MORRILL & OTHERS
vs.
JAMES ARMSTRONG & OTHERS. } In ejectment.

"Pleas before the judge of the circuit court of the United States for the district of West Va., at Parkersburg, West Virginia, the 8th day of August, 1867.

"Be it remembered that heretofore, to wit, at a circuit court of the United States for the district of West Virginia, held at Parkersburg, on the 23d day of November, 1866, this cause having been trans-
15 ferred to this court from the district court of the United States directed by law to be held at Charleston, in the county of Kanawha, and State of West Virginia, by an order of said last-named court, and the papers of the same, together with a transcript of the proceedings in the same in said court, being now here produced to the court, on motion of the plaintiffs, by their attorney, it is ordered that this cause be docketed, and further proceeded in in this court.

"And now at this day, to wit, at a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, on the 8th day of August, 1867, the day and year first herein mentioned, on motion of the defendants, by their attorney, and with the assent of the plaintiffs, it is ordered that this cause be remanded to the district court of the United States held at Charleston, in the State of West Virginia, from which the same was sent to this court, and it is ordered that the clerk of this court do, as soon as may be, transmit to the clerk of the said district court all of the original papers in said cause, together with a copy of all proceedings had in this court, and a statement of all costs incurred by both parties in this court in this behalf; provided, however, and it is agreed between the parties, that the trial of the issue made in this cause shall not be had at the term of said district

court at which the same may be docketed, but shall be deferred,
16 and the cause continued until the then next term of said court thereafter.

"Plaintiffs' costs:		"Defendants' costs:	
Clerk	$4 55	Clerk	$3 21
Marshal	....	Marshal	....
Witnesses	34 70	Witnesses	22 90
		Transcript	60
	$		$

"A true transcript from the record.
"Teste:
A. M. MOSS,
"*Clerk U. S. C. C. Dist. W. Va.*"

Cause redocketed.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Tuesday, the 26th day of November, 1867, came the plaintiffs, by their attorney, and on their motion this cause was ordered to be docketed. And it was further ordered that the said cause take the same place on the docket of this court occupied by it when the said cause was removed to the circuit court.

Cause continued.

And at a court held as aforesaid on Wednesday, the 23d day of April, 1868, on motion of the plaintiffs and for reasons appearing to the court, this cause was continued until the next term, but at the costs of the plaintiffs.

Plea not guilty & jury.

And at a court held as aforesaid on Thursday, the 19th day of November, 1868, came the parties, by their attorneys, and thereupon the defendants, for plea, say that they are not guilty of unlawfully withholding the said premises as in the amended declaration and amended fourth count against them it is alleged; and of this they put themselves
17 upon the country, and the plaintiffs doth the like. And thereupon came a jury, to wit, Philip Frankenberger, James B. Malone, Justin N. Chamberlain, Jesse C. Riley, Squire G. Jarrett, Isaac H. Snyder, Alfred Turner, Odell S. Long, Edward J. Whipple, William H. Sheib, John W. Wingfield, and Calvin A. Brewer, all good and lawful men of this judicial district, who being selected, tried, and sworn to well and truly try the issues in this cause, and having partly heard the evidence, and it being too late to finish the trial of this cause on this day, the jury are adjourned over until to-morrow morning at 9 o'clock.

Death of def't Middleton suggested.

And at a court held as aforesaid on Friday, the 20th day of November, 1868, the plaintiffs, by their attorney, here suggest that, since the institution of this suit, the defendant Henry O. Middleton has died; and on their motion it was ordered that this suit abate as to him. And then came the parties, by their attorneys, and the jury impanneled and

sioner of the revenue for said Jackson County, from the formation of said county to the year 1838, inclusive; also the land-books of said commissioner of the revenue for the year 1845, now filed in his office.

14 *Cause continued.*

And at a court held as aforesaid on the 21st day of April, 1866, on motion of the plaintiffs, by their attorney, and for reasons appearing to the court, this cause was continued until the next term, at the costs of the plaintiffs.

Cause transferred to circuit court.

And at a court held as aforesaid on Thursday, the 20th day of September, 1866, on motion of the plaintiffs and for reasons appearing to the court, it was ordered that this cause be transferred to the circuit court of the United States sitting at Parkersburg, there to be docketed, and proceeded in according to law; and it was further ordered that the clerk of this court collect and take the papers in this cause to the court at Parkersburg.

The following is a copy of the transcript of the proceedings had in this cause in the said circuit court, to wit:

"UNITED STATES OF AMERICA, *ss:*

"LOT M. MORRILL & OTHERS
vs.
JAMES ARMSTRONG & OTHERS. } In ejectment.

"Pleas before the judge of the circuit court of the United States for the district of West Va., at Parkersburg, West Virginia, the 8th day of August, 1867.

"Be it remembered that heretofore, to wit, at a circuit court of the United States for the district of West Virginia, held at Parkersburg, on the 23d day of November, 1866, this cause having been trans-
15 ferred to this court from the district court of the United States directed by law to be held at Charleston, in the county of Kanawha, and State of West Virginia, by an order of said last-named court, and the papers of the same, together with a transcript of the proceedings in the same in said court, being now here produced to the court, on motion of the plaintiffs, by their attorney, it is ordered that this cause be docketed, and further proceeded in in this court.

"And now at this day, to wit, at a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, on the 8th day of August, 1867, the day and year first herein mentioned, on motion of the defendants, by their attorney, and with the assent of the plaintiffs, it is ordered that this cause be remanded to the district court of the United States held at Charleston, in the State of West Virginia, from which the same was sent to this court, and it is ordered that the clerk of this court do, as soon as may be, transmit to the clerk of the said district court all of the original papers in said cause, together with a copy of all proceedings had in this court, and a statement of all costs incurred by both parties in this court in this behalf; provided, however, and it is agreed between the parties, that the trial of the issue made in this cause shall not be had at the term of said district

court at which the same may be docketed, but shall be deferred,
16 and the cause continued until the then next term of said court thereafter.

"Plaintiffs' costs:		" Defendants' costs:	
Clerk	$4 55	Clerk	$3 21
Marshal	....	Marshal	....
Witnesses	34 70	Witnesses	22 90
		Transcript	60
	$		$

"A true transcript from the record.
"Teste: A. M. MOSS,
" *Clerk U. S. C. C. Dist. W. Va.*"

Cause redocketed.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Tuesday, the 26th day of November, 1867, came the plaintiffs, by their attorney, and on their motion this cause was ordered to be docketed. And it was further ordered that the said cause take the same place on the docket of this court occupied by it when the said cause was removed to the circuit court.

Cause continued.

And at a court held as aforesaid on Wednesday, the 23d day of April, 1868, on motion of the plaintiffs and for reasons appearing to the court, this cause was continued until the next term, but at the costs of the plaintiffs.

Plea not guilty & jury.

And at a court held as aforesaid on Thursday, the 19th day of November, 1868, came the parties, by their attorneys, and thereupon the defendants, for plea, say that they are not guilty of unlawfully withholding the said premises as in the amended declaration and amended fourth count against them it is alleged; and of this they put themselves
17 upon the country, and the plaintiffs doth the like. And thereupon came a jury, to wit, Philip Frankenberger, James B. Malone, Justin N. Chamberlain, Jesse C. Riley, Squire G. Jarrett, Isaac H. Snyder, Alfred Turner, Odell S. Long, Edward J. Whipple, William H. Sheib, John W. Wingfield, and Calvin A. Brewer, all good and lawful men of this judicial district, who being selected, tried, and sworn to well and truly try the issues in this cause, and having partly heard the evidence, and it being too late to finish the trial of this cause on this day, the jury are adjourned over until to-morrow morning at 9 o'clock.

Death of def't Middleton suggested.

And at a court held as aforesaid on Friday, the 20th day of November, 1868, the plaintiffs, by their attorney, here suggest that, since the institution of this suit, the defendant Henry O. Middleton has died; and on their motion it was ordered that this suit abate as to him. And then came the parties, by their attorneys, and the jury impanneled and

sworn in this cause appeared in court, according to their adjournment of the day before, and having further heard the evidence, and the same not being concluded, and it being too late to finish the trial of this cause on that day, the jury were adjourned over until the next morning at 9 o'clock.

And at a court held as aforesaid on Saturday, the 21st day of November, 1868, came the parties, by their attorneys, and the jury impanneled and sworn in this cause again appeared in court, according to their adjournment of the day before, and having further heard the evi-
18 dence, and the same not being concluded, and it being too late to finish the trial of this cause on that day, the jury were adjourned over until the next Monday morning at 9 o'clock.

Juror withdrawn, & cause continued.

And at a court held as aforesaid on Monday, the 23d day of November, 1868, came the parties, by their attorneys, and the jury impanneled and sworn in this cause again appeared in court, according to their adjournment of Saturday last; and thereupon, by consent of parties, by their attorneys, Edward J. Whipple, one of the jurors aforesaid, was withdrawn, and the rest of the jury aforesaid from rendering a verdict were discharged, and by like consent this cause was continued until the next term.

Jury impanneled.

And at a court held as aforesaid on Wednesday, the 21st day of April, 1869, came the parties, by their attorneys; and thereupon came a jury, to wit, Henry H. Blackburn, Henry Brannon, James J. Duncan, Benjamin F. Little, Charles Davies, Edwin W. S. Moore, Chester D. Hubbard, John S. Burdett, Samuel C. Ludington, Alonzo M. Wilson, John G. Blackford, and Zopher D. Ramsdell, all good and lawful men of this judicial district, who, being selected, tried, and sworn to well and truly try the issues in this cause, and having heard a part of the evidence, and there not being time to finish the trial of the cause, the jury were adjourned over until the next morning at 9 o'clock, to which time this cause was continued.

And at a court held as aforesaid on Thursday, the 22d day of
19 April, 1869, came the parties, by their attorneys, and the jury impanneled and sworn in this cause again appeared in court pursuant to their adjournment of the day before, and having further heard the evidnce, and the same not being concluded, and it being too late to finish the trial on this day, the jury were adjourned over until the next morning at 8 o'clock, to which time this cause was continued.

And at a court held as aforesaid on Friday, the 23d day of April, 1869, came the parties, by their attorneys, and the jury impanneled and sworn in this cause again appeared in court pursuant to their adjournment of the day before, and having further heard the evidence, and the same not being concluded, and it being too late to complete the trial on this day, the jury were adjourned over until the next morning at 8 o'clock, to which time this cause was continued.

Evidence completed.

And at a court held as aforesaid on Saturday, the 24th day of April,

1869, came the parties, by their attorneys, and the jury impanneled and sworn in this cause again appeared in court pursuant to their adjournment of the day before, and having fully heard the evidence, and there not being time to hear the arguments of counsel on this day, the jury were adjourned until the ensuing Monday morning at 8 o'clock, to which time this cause was continued.

20 And at a court held as aforesaid on Monday, the 26th day of April, 1869, came the parties, by their attorneys, and the jury impanneled and sworn in this cause again appeared in court pursuant to their adjournment of Saturday last, and having partly heard the arguments of counsel, and it being too late to complete the same to-day, the jury were adjourned over until the next morning at 8 o'clock, to which time this cause was continued.

And at a court held as aforesaid on Tuesday, the 27th day of April, 1869, came the parties, by their attorneys, and the jury impanneled and sworn in this cause appeared in court pursuant to their adjournment of the day before, and having further heard the arguments of counsel, and it being too late to complete the same on to-day, the jury were adjourned over until the next morning at 8 o'clock, to which time this cause was continued.

Verdict of jury.

And at a court held as aforesaid on Wednesday, the 28th day of April, 1869, came again the parties, by their attorneys, and the jury impanneled and sworn in this cause appeared in court pursuant to their adjournment of the day before, and having fully heard the arguments of counsel, retired to consider of their verdict; and being absent awhile, returned into court, and upon their oaths do say, "We, the jury, find for the plaintiff, Lot M. Morrill, the tract of land in the declaration mentioned as therein described, except so much thereof as lies within
21 the grant to Jacob Starcher, dated August 2d, 1819, and filed in said cause, marked letter E, shaded red on the plat returned and filed by Robert Parks, surveyor in this cause, marked 'No. 1 & letter A,' and having on the face of said plat the words 'Jacob Starcher, 40 A, patent' written thereon; and we further find that the plaintiff has an estate in fee simple to the land in the declaration mentioned, with the exception aforesaid, and we assess the damages of the plaintiff at one cent, and we further find that the land recovered by the plaintiff is worth over the sum of two thousand dollars."

Judgment.

And now at this day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Thursday, the 29th day of April, 1869, the same day and year first herein mentioned, came the parties, by their attorneys, and the court having considered the verdict returned by the jury in this cause on yesterday, it is therefore considered by the court that the plaintiff, Lot M. Morrill, recover against the said defendants the land found by the jury for the said plaintiff as in the said verdict described, and the damages by the said jury assessed, and his costs by him about his suit in this behalf expended; and the court certifies that the value of the land so recovered exceeds two thousand dollars.

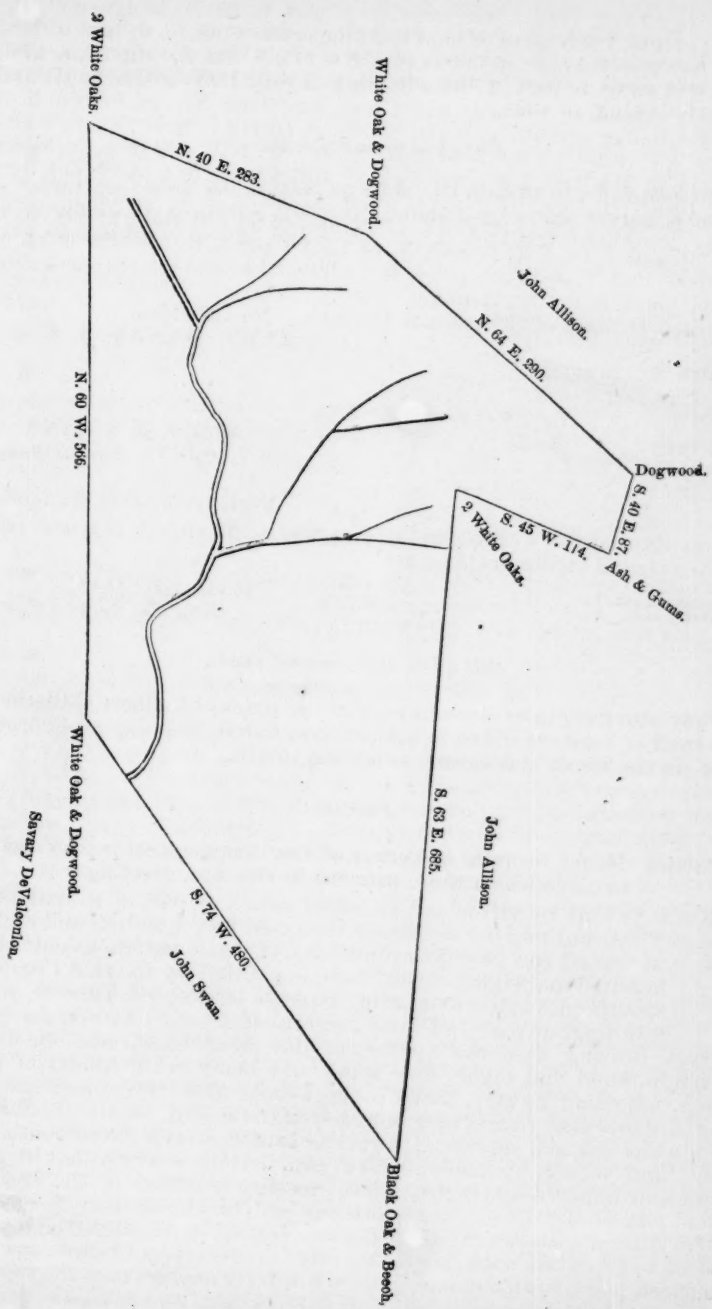
Memorandum.

Upon the trial of this cause the defendants filed two bills of
22 exceptions to the opinions of the court, which are signed, sealed, and made a part of the record, and which are in the words and figures following, to wit:

First bill of exceptions.

"The plaintiffs, to sustain the issue on their part, gave in evidence a copy of a survey made by Samuel Hanway, surveyor of Monongalia County, for Albert Gallatin, in the words and figures following, to wit:

N. 17.


2 White Oaks.
N. 40 E. 283.
White Oak & Dogwood.
John Allison.
N. 64 E. 290.
Dogwood.
N. 60 W. 566.
S. 45 W. 114.
2 White Oaks.
S. 40 E. 25.
Ash & Gums.
White Oak & Dogwood.
Savary DeValcourt.
S. 74 W. 480.
John Swan.
S. 63 E. 685.
John Allison.
Black Oak & Beech.

AUGUST 14TH, 1784.—Surveyed for Albert Gallatin, assignee of Stephen Lacoste, 1,500 acres of land in Monongalia County, in part of land office treasury warrant of 5,000 acres, No. 17485, dated June 27th, 1780, entered the 13th of July, 1784, adjoining Savary DeValconlon's 45th entry, and extending towards Mill Creek, and bounded as followeth, to wit: Beginning at white oak and dogwood, corner to said Savary's 17th survey, and then, by lands of John Swan, S. 74 W. 480 poles, crossing a branch of the first left-hand fork of Mill Creek, to a black oak and beech; thence, by lands of John Allison's, S. 63 E. 685 poles, to
23 two white oaks; S. 45 W. 114 poles, to an ash and gum; S. 40 E. 37 poles, to a dogwood; N. 64 E. 290 poles, to a white oak and dogwood; and N. 40 E. 283 poles, to 2 white oaks; and thence north sixty W. 566 poles, to the beginning.

Plotted on scale of 200 poles to the inch. No variation.

SAM'L HANAY, *S. M. C.*

JOHN SLAUGHTER,
ASA L. ERLESSON,
Sworn chain-carriers.

(A copy.) Teste: SAM'L MCCRAW,
Cl'k L. Off. Va. Land Office.

RICHMOND, *July* 29, 1868.

I certify that the within plat and certificate of survey is a true copy of the original on file in this office.

{ VIRGINIA LAND OFFICE SEAL. }

H. R. SUTTON,
Reg. Va. Land Office.

Bill of exceptions continued.

They also gave in evidence a copy of the patent to Albert Gallatin for the tract of land described in said survey, dated 10th day of Februa'y, 1786, in the words and figures following, to wit:

Patent.

"Patrick Henry, esquire, governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye that by virtue and in consideration of part of a land office treasury warrant number seventeen thousand four hundred and eighty-five, and issued the twenty-seventh day of June one thousand seven hundred and eighty-three, there is granted by the said Common-
24 wealth unto Albert Gallatin, assignee of Stephen Lacoste, a certain tract or parcel of land containing fifteen hundred acres, by survey bearing date the fourteenth day of August, one thousand seven hundred and eighty-four, lying and being in the county of Harrison, adjoining Savary DeValconlon's forty-fifth entry, and extending towards Mill Creek, and bounded as followeth, to wit: Beginning at a white oak and dogwood, corner to said Savary's seventeenth survey; and thence, by lands of John Swan, south seventy-four degrees west four hundred and eighty poles, crossing a branch of the first left-hand fork of Mill Creek, to a black oak and beech; thence, by lands of John Allison's, south sixty-three degrees east six hundred and eighty-five poles, to two white oaks; south forty-five degrees west one hundred and fourteen poles, to an ash and gum; south forty degrees east thirty-seven poles, to a dogwood; north sixty-four degrees east two hundred and ninety

poles, to a white oak and dogwood; north forty degrees east 283 poles, to two white oaks; thence north sixty degrees west five hundred and sixty-six poles, to the beginning, with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said Albert Gallatin and his heirs, forever.

In witness whereof the said Patrick Henry, esquire, governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said Commnowealth to be affixed, at Richmond, on the tenth day of February, in the year of our Lord one thou-
25 sand seven hundred and eighty-six, and of the Commonwealth the tenth.

P. HENRY.

(A copy from record.)
Teste:

SAM. McCRAW,
Cl'k L. Off. Va. Land Office.

RICHMOND, *July* 30, 1868.

I certify that the within is a true copy from the records of this office, and issued in Albert Gallatin's 17th survey.

{ VIRGINIA LAND } { OFFICE SEAL. }

H. R. SUTTON,
Reg. Va. Land Office.

Bill of exceptions continued.

The plaintiffs also gave in evidence the deed from Albert Gallatin and Savary DeValconlon, by Albert Gallatin, as his attorney in fact, to Robert Morris, dated May 7th, 1794, in the words and figures following, to wit:

Deed—Gallatin, &c., to Morris.

This indenture tripartite, made the seventh day of May, in the year of our Lord one thousand seven hundred and ninety-four, between Albert Gallatin, of Fayette County, in the State of Pennsylvania, esquire, and Hannah, his wife, of the first part, and Savary DeValconlon, alias John Savary, of Washington County, in the said State, gentleman, by the said Albert Gallatin, his attorney, duly constituted for this purpose, of the second part, and the Honorable Robert Morris, of the city of Philadelphia, esquire, of the third part; whereas the said Albert Gallatin has obtained from the State of Virginia patents for
26 sundry tracts of land lying on the western waters of the State of Virginia aforesaid; and whereas the said Savary DeValconlon (alias John Savary) did, by indenture bearing date the ninth day of August, one thousand seven hundred and ninety-one, convey to the said Albert Gallatin sundry tracts of land also lying on the western waters of the State of Virginia, for which said tracts patents had issued in the name of the said Savary DeValconlon, and also his, the said Savary's, undivided half part of and in sundry other tracts of land also lying on the western waters of the State of Virginia, for which said last-mentioned tracts patents had issued in the joint names of the said Savary DeValconlon and Albert Gallatin; and whereas the said Savary DeValconlon, (alias John Savary,) by a power of attorney dated the twenty-fifth day of March last, did appoint and constitute the said Albert Gallatin to be his attorney in fact for the purpose of conveying, bargaining, and selling of all and every tract and tracts of land belonging to the said Savary, within the counties of Mo-

17481; which said five first-described parcels of land, and the one moiety or half part of the last or sixth described parcel of land, containing together in the whole sixty-five thousand three hundred and fifteen acres and a half, situate and being as the same are hereinbefore described, or as the same may be otherwise situated, bounded, and being, agreeable to the metes, bounds, and descriptions thereof expressed and mentioned in the said recited several patents: together with all and singular the
32 ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits, thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever of him, the said Albert Gallatin, and Hannah, his wife, in law, equity, or otherwise howsoever, of, in, and to the same. To have and to hold the aforesaid sixty-five thousand three hundred and fifteen and a half acres of land, hereditaments, and premises, her'by granted by the said Albert Gallatin, in his own capacity, with the appurtenances, unto the said Robert Morris, his heirs and assigns, to and for the only proper use and behoof of the said Robert Morris, his heirs and assigns, forever. And the said Albert Gallatin, for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said Robert Morris, his heirs and assigns, that he, the said Albert Gallatin, and his heirs, all and singular the aforesaid premises, with the appurtenances granted by him to the said Robert Morris, his heirs and assigns, against him the said Albert Gallatin, and his heirs, and against all and every other person and persons whatsoever, lawfully claiming or to claim, by, from, or, under him or them, or any of them, shall and will warrant and forever defend by these presents. And this indenture further witnesseth that the said Savary DeValconlon, for and in consideration of the sum of five
33 shillings, lawful money of Pennsylvania, to him, the said Albert Gallatin, for the use of his constituent, the said Savary DeValconlon, by the said Robert Morris, at or before the sealing and delivery hereof, well and truly paid, the receipt whereof he, the said Albert Gallatin, doth hereby acknowledge, and for divers other valuable considerations, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said Robert Morris, his heirs and assigns, all and singular the nine following tracts or parcels of land lying in the county of Kanhawa, patented as lying in the county of Harrison, granted by the Commonwealth of Virginia to the said Savary DeValconlon, by nine patents dated the tenth day of February, 1786, respectively, the first of which tracts, marked No. 2, containing fifteen hundred acres, and patented by virtue of part of a land office treasury warrant, No. 17505; the second, marked No. 3, containing fifteen hundred acres, was patented by virtue of part of a land office treasury, No. 17480; the third, marked No. 4, containing fifteen hundred acres, was patented by virtue of part of a land office treasury warrant, No. 17499; the fourth, marked No. 5, containing seventeen hundred acres, was patented by virtue of part of a land office treasury warrant, 17478; the fifth, marked No. 6, containing fifteen hundred acres, was patented by virtue of part of a land office treasury warrant, No. 17502; the sixth, marked No. 10, containing fifteen hundred acres, was
34 patented by virtue of part of a land office treasury warrant, No. 20763; the seventh, marked No. 12, containing fifteen hundred acres, was patented by virtue of part of a land office treasury warrant, No. 17493; the eighth, marked No. 21, containing fifteen hundred acres, was patented by virtue of part of a land office treasury warrant, No.

17499; and the ninth, marked No. 22, containing fifteen hundred acres of land, was patented by virtue of a land office treasury warrant, No. 17418; which said nine tracts of land, containing in the whole thirteen thousand seven hundred acres, situate and being as the same are hereinbefore described, or as the same may be otherwise situated, bounded and being agreeable to the descriptions thereof expressed and mentioned in the several patents for the same, together with all and singular the ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions, remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever, of him, the said Savary DeValconlon, in law, equity, or otherwise howsoever of, in, and to the same. And also all his, the said Savary DeValconlon's, right, title, interest, property, and claim, of and in all and singular the [the] tracts or pieces of land hereinbefore described, and parts of tracts or pieces of land which the said Savary DeValconlon, by the above recited indenture, granted and con-
35 veyed unto the said Albert Gallatin, as aforesaid. To have and to hold all and singular the said premises hereby granted, bargained, and sold by the said Savary DeValconlon, with the respective appurtenances, unto the said Robert Morris, his heirs and assigns, to and for the only proper use and behoof of the said Robert Morris, his heirs and assigns, forever. And the said Savary DeValconlon, for himself, his heirs, executors, and administrators, doth, by his said attorney, covenant, promise, and agree, to and with the said Robert Morris, his heirs and assigns, by these presents, that he, the said Savary DeValconlon, and his heirs, all and singular the premises hereby granted by him, with the appurtenances, unto the said Robert Morris, his heirs and assigns, against him, the said Savary DeValconlon, and his heirs, and against all and every other person and persons whatsoever lawfully claiming or to claim, by, from, or under him or them, or any of them, shall and will warrant and forever defend by these presents.

In witness whereof the said parties to these presents have interchangeably set their hands and seals hereunto, dated the day and year first above written.

ALBERT GALLATIN. [SEAL.]
HANNAH GALLATIN. [SEAL.]
SAVARY DEVALCONLON, [SEAL.]
By his attorney, ALBERT GALLATIN. [SEAL.]

Sealed and delivered in the presence of us—
WM. MONTGOMERY.
JAMES STRAWBRIDGE.
JOHN SMILIE.

CITY OF PHILADELPHIA, *ss:*

36 I, Matthew Clarkson, esquire, mayor of the city of Philadelphia aforesaid, do hereby certify that Albert Gallatin, esquire, and Hannah, his wife, in the within written indenture named, personally appeared before me and in due form of law acknowledged the within written indenture as their and each of their act and deed; she, the said Hannah, being first by me separately examined from her said husband and declaring she executed the same voluntarily, and without any compulsion or undue influence whatever; and the said Albert Gallatin, by virtue of the power to him granted, acknowledged the same indenture as the act and deed of his constituent, the within-named Savary DeValconlon.

In testimony whereof, and in order that the same may be recorded as such according to the laws of Virginia, I, the said mayor, have hereunto set my hand and caused the seal of the said city to be hereto affixed this day of May, in the year of our Lord one thousand seven hundred and ninety four.

[L. S.] MATTH. CLARKSON.

Received the day of the date of the within written indenture of the within-named Robert Morris, esquire, the several consideration monies within mentioned, which, with other valuable considerations received, is in full for the within-granted premises.

37 ALBERT GALLATIN.

Witness:
WM. MONTGOMERY.
JAMES STRAWBRIDGE.

Kanawha County, April court, 1797.

This deed from Albert Gallatin, esquire, and wife, & Savary DeValconlon, to Robert Morris, esquire, for land, being presented in court duly acknowledged before the mayor of the city of Philadelphia, which this court thinks sufficient testimony, & the same is ordered to record.

A copy. Teste: J. REYNOLDS, *C. K. C.*

VIRGINIA, *Jackson County:* CLERK'S OFFICE, *October* 5, 1858.

This deed with the certificate of acknowledgment and privy examination thereon written, and also the certificate of record in Kanawha County, was this day admitted to record in said office book No. 12, page 543.

Teste: BEN. WRIGHT, *Clerk.*

Bill of exceptions continued.

The plaintiffs also gave in evidence a deed from Robert Morris and wife, John Nicholson & wife, & James Greenleaf, to Thomas Willing, John Nixon, and John Barclay, dated the 5th day of March, 1795, in the words and figures following, to wit:

Deed—Morris & others to Willing & others.

This indenture, made the fifth day of March, in the year of our Lord one thousand seven hundred and ninety-five, between the Honor
able Robert Morris, of the city of Philadelphia, in the Common-
38 wealth of Pennsylvania, esquire, and Mary, his wife; John Nicholson, of the same city, esquire, and Hannah, his wife; and James Greenleaf, counsul from the United States of America, at the city of Amsterdam, in the United Netherlands, at present of the city of New York, in the State of New York, esquire, all of the one part, and Thomas Willing, of the said city of Philadelphia, esquire, president of the Bank of the United States; John Nixon, of the said city of Philadelphia, esquire, president of the Bank of North America; and John Barclay, of the said city of Philadelphia, esquire, president of the Bank of Pennsylvania, all of the other part, witnesseth that the said Robert Morris and Mary, his wife, John Nicholson and Hannah, his wife, and James Greenleaf, as well for and in consideration of the

sum of five shillings, lawful money of Pennsylvania, unto each of them in hand well and truly paid by the said Thomas Willing, John Nixon, and John Barclay, or by one of them, at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, as of divers other good causes and considerations them, the said Robert Morris and Mary, his wife, John Nicholson and Hannah, his wife, and James Greenleaf, more especially thereunto moving, have and each of them hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents do, and each of them doth, grant, bargain, sell, alien, enfeoff, release, and confirm unto the said Thomas Willing, John Nixon, and John Barclay, and to the survivors and survivor of them, and to the heirs and assigns of them, and of the survivors and survivor of them, all those nineteen thousand seven hundred acres, situate, lying, and being in the county of Monongalia; ten thousand acres, situate, lying, and being in the county of Washington; and six thousand five hundred acres, situate, lying, and being in the county of Harrison, making together, thirty-six thousand and two hundred acres of land in the Commonwealth of Virginia, which Levi Hollingsworth, by indenture No. 16, under his hand and seal duly executed, bearing date the twenty-fourth day of May, anno Domini 1794, inter alia, granted and conveyed unto the said Robert Morris in fee simple; also all those ten thousand acres of land, situate, lying, and being in the county of Ohio, which Levi Hollingsworth by indenture No. 34, under his hand and seal duly executed, bearing date the fourth day of June, anno Domini 1794, granted and conveyed unto the said Robert Morris in fee simple; also all those eighteen thousand eight hundred and twenty-five acres of land, situate, lying, and being in the county of Randolph, which Michael Gratz and wife, by indenture No. 43, under their hands and seals duly executed, bearing date the sixth day of June, anno Domini 1794, granted and conveyed unto the said Robert Morris in fee simple; also all those two thousand acres of land, situate, lying, and being in the county of Montgomery, which Michael Gratz and wife, by indenture No. 48, under their hands and seals duly executed, bearing

39 COUNTIES OF—

Monongalia.	Washington.	Harrison.	Ohio.	Randolph.	Montgomery.	Greenbrier.	Russell.	Kenhawa.	Totals.
Acres.	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*
19,700	10,000	6,500	.....	.....	.....	.....	.....	.....	36,200
			10,000	.....	.....	.....	.....	.....	10,000
				18,825	.....	.....	.....	.....	18,825
					2,000	.....	.....	.....	2,000

40 COUNTIES OF—

Monongalia.	Washington.	Harrison.	Ohio.	Randolph.	Montgomery.	Greenbrier.	Russell.	Kenhawa.	Totals.
Acres.	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*
	10,000	.....	.....	.....	.....	.....	.....	.....	10,000
		10,000	.....	.....	.....	.....	.....	.....	10,000
						3,000	.....	.....	3,000
	5,000	.....	.....	.....	.....	.....	.....	.....	5 000
			20,000	.....	.....	.....	.....	.....	20,000
					143,000	.....	.....	.....	143,000

41 COUNTIES OF—

Monongalia.	Washington.	Harrison.	Ohio.	Randolph.	Montgomery.	Greenbrier.	Russell.	Kenhawa.	Totals.
Acres.	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*
					62,000	.....	.....	.....	62,000

date the tenth day of June, anno Domini 1794, granted and conveyed unto the said Robert Morris in fee simple; also all those ten thousand acres, situate, lying, and being in the county of Washington, which Levi Hollingsworth, by indenture No. 57, under his hand and seal duly executed, bearing date the twenty-third day of June, anno Domini 1794, inter alia, granted and conveyed unto the said Robert Morris in fee simple; also all those ten thousand acres of land, situate, lying, and being in the county of Harrison, which Levi Hollingsworth, by indenture No. 65, under his hand and seal duly executed, bearing date the first day of July, anno Domini 1794, granted and conveyed unto the said Robert Morris in fee simple; also all those three thousand acres of land, situate, lying, and being in the county of Greenbrier, which Michael Gratz & wife, by indenture No. 69, under their hands and seals duly executed, bearing date the third day of July, anno Domini 1794, granted and conveyed unto the said Robert Morris in fee simple; also all those five thousand acres of land, situate, lying, and being in the county of Washington, which Levi Hollingsworth, by indenture No. 72, under his hand and seal duly executed, bearing date the fourth day of July, anno Domini 1794, granted and conveyed unto the said Robert Morris in fee simple; also all those twenty thousand acres of land, situate, lying, and being in the county of Ohio, which Levi Hollingsworth, by indenture No. 80, under his hand and seal duly executed, bearing date the third day of July, anno Domini 1794, granted and conveyed unto the said Robert Morris in fee simple; also all those one hundred and forty-three thousand acres of land, situate, lying, and being in the county of Montgomery, which Levi Hollingsworth, by indenture No. 238, under his hand and seal duly executed, bearing date the fifth day of July, anno Domini 1794, inter alia, granted and conveyed unto the said Robert Morris in fee simple; also all those sixty-two thousand acres of land, situate, lying, and being in the county of Montgomery, which Dorsey Pentecost, by his attorney, Levi Hollingsworth, by indenture No. 319, under their hands and seals duly executed, bearing date the eighth day of July, anno Domini 1794,

					13, 026¼	.....	.....	.....	13, 026¼
					30, 000	.....	.....	.....	30, 000
					30, 000	.....	.....	.....	30, 000
							20, 000	.....	20, 000

42 COUNTIES OF—

Monongalia.	Washington.	Harrison.	Ohio.	Randolph.	Montgomery.	Greenbrier.	Russell.	Kenhawa.	Totals.
Acres.	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*
						20, 555	.....	.....	20, 555
					29, 999½	16, 000	.....	.....	45, 999½
		27655¼	.....	.....	.....	16, 800	.....	34, 560	79, 015¼

inter alia, granted and conveyed unto the said Robert Morris in fee simple; also all those thirteen thousand and twenty-six acres and an half of land, situate, lying, and being in the county of Montgomery, which Benjamin Lodge, by indenture No. 321, under his hand and seal duly executed, bearing date the second day of April, anno Domini 1794, granted and conveyed unto the said Robert Morris in fee simple; also all those thirty thousand acres of land, situate, lying, and being in the county of Montgomery, which James Carnoghan, by indenture No. 323, under his hand and seal duly executed, bearing date the second day of April, anno Domini 1794, granted and conveyed unto the said Robert Morris in fee simple; also all those thirty thousand acres of land, situate, lying, and being in the county of Montgomery, which James Carnoghan, by indenture No. 325, under his hand and seal duly executed, bearing date the second day of May, anno Domini 1794, granted and conveyed unto the said Robert Morris, in fee simple; also all those twenty thousand acres of land, situate, lying, and being in the county of Russell, which Peter Lohea, by indenture No. 331, bearing date the fifteenth day of March, anno Domini 1794, under his hand and seal duly executed, granted and conveyed unto the said Robert Morris in fee simple; also all those twenty thousand five hundred and fifty-five acres of land, situate, lying, and being in the county of Greenbrier, which John Beckley, by indenture No. 351, under his hand and seal duly executed, bearing date the twenty-eighth day of April, anno Domini 1794, granted and conveyed unto the said Robert Morris in fee simple; also all those twenty-nine thousand nine hundred and ninety-nine acres and one-quarter, situate, lying, and being in the county of Montgomery, and sixteen thousand acres, situate, lying, and being in the county of Greenbrier, making together forty-five thousand nine hundred and ninety-nine acres and one-quarter of land, which John Singer and wife, and Abraham Singer, by indenture No. 373, under their hands and seals duly executed, bearing date the nineteenth day of March, anno Domini 1794, granted and conveyed unto the said Robert Morris in fee simple; and all those twenty-seven thousand six hundred and fifty-five acres and

19, 700	25, 000	44155½	30, 000	18, 825	310, 025½	56, 355	20, 000	34, 560	558, 621½

an half, situate, lying, and being in Harrison County; sixteen thousand and eight hundred acres, situate, lying, and being in Greenbrier County; and thirty-four thousand five hundred and sixty acres, situate, lying, and being in Kenhawa County, making together seventy-nine thousand and fifteen acres and an half of land, which Albert Gallatin and wife, and Savary De Valconlon, by his attorney, Albert Gallatin, by indenture No. 414, under their hands and seals duly executed, bearing date the seventh day of May, anno Domini 1794, granted and conveyed unto the said Robert Morris in fee simple; said lands making in all nineteen thousand and seven hundred acres in the county of Monongalia, twenty-five thou-

43 sand acres in the county of Washington, forty-four thousand one hundred and fifty-five acres and an half in the county of Harrison, thirty thousand acres in the county of Ohio, eighteen thousand eight hundred and twenty-five acres in the county of Randolph, three hundred and ten thousand and twenty-five acres and three-quarters in the county of Montgomery, fifty-six thousand three hundred and fifty-five acres in the county of Greenbrier, twenty thousand acres in the county of Russell, and thirty-four thousand five hundred and sixty acres in the county of Kenhawa, and amounting in the whole to five hundred and fifty-eight thousand six hundred and twenty-one acres and one-quarter of land in the said Commonwealth of Virginia; all which aforesaid lands, although not granted and conveyed to them, the said Robert Morris, John Nicholson, and James Greenleaf, and in each of their names, are nevertheless owned by them as tenants in common, in fee simple, together with all and singular the ways, woods, underwoods, mines, minerals, ores, savannas, marshes, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever unto the aforesaid described lands and premises, and to every part and parcel thereof belonging or in any wise appertaining, and the reversions, remainders, rents, issues, and profits thereof, and of every part and parcel thereof, and all deeds, evidences, and securities of the titles thereof, and all articles of agreement and other insruments of writing whatsoever relating and appertaining to the titles of the same, or of any part or parcel of the same, which now are, or hereafter may be in their, or any, or either of their custody, power, or possession; and

44 also all the estate, right, title, interest, use, possession, property, claim, and demand whatsoever of them, the said Robert Morris and Mary, his wife, John Nicholson and Hannah, his wife, and James Greenleaf, and each of them, either in law or equity, of, in, and to the said premises and appurtenances, to have and to hold the said tracts, pieces, or parcels of land, hereditaments, and premises hereby granted or mentioned, or intended to be granted, with the appurtenances, unto the said Thomas Willing, John Nixon, and John Barclay, and to the survivors and survivor of them, and to the heirs and assigns of them, and of the survivors and survivor of them, to the only proper use, benefit, and behoof of them, the said Thomas Willing, John Nixon, and John Barclay, and the survivors and survivor of them, and the heirs and assigns of them, and of the survivors and survivor of them, forever; upon this special trust and confi-

dence, and to the sole intent and purpose, that they, the said Thomas Willing, John Nixon, and John Barclay, and the survivors and survivor of them, and the heirs of the survivor, by deeds grant and convey the same agreeably to the articles of the "North American Land Company," bearing date the twentieth day of February, anno Domini one thousand seven hundred and ninety-five, between "the Honorable Robert Morris, esquire, of the city of Philadelphia; John Nicholson, esquire, of the said city of Philadelphia; and James Greenleaf, esquire, consul from the United States at Amsterdam, but now in New York, of the one part, and those who shall become purchasers, owners, or holders of
45 shares in the North American Land Company of the other part," and which said articles are enrolled in the rolls office for the Commonwealth of Pennsylvania, in deed book No. 43, page 277, &c.; and the said Robert Morris, John Nicholson, and James Greenleaf, for themselves, their heirs, executors, and administrators, jointly and severally, do, and each of them doth, covenant, promise, and agree to and with the said Thomas Willing, John Nixon, and John Barclay, and each of them, and the survivors and survivor of them, and the heirs and assigns of them, and of the survivors and survivor of them, in the manner and form following, that is to say: that they, the said Robert Morris, John Nicholson, and James Greenleaf, and each of them, their and each of their heirs, shall and will from time to time, and at all times hereafter, upon the reasonable request of the said Thomas Willing, John Nixon, and John Barclay, or the survivors or survivor of them, or of the heirs or assigns of them, or of the survivors or survivor of them, make, execute, and deliver, or cause to be made, executed, and delivered, unto the said Thomas Willing, John Nixon, and John Barclay, or the survivors or survivor of them, or the heirs or assigns of them, or of the survivors or survivor of them, all such further and other act and acts, deed and deeds, conveyances and assurances, in the law whatsoever, for the better and more perfect granting, conveying, assuring, and vesting in them, the said Thomas Willing, John Nixon, and John Barclay, and the survivors and survivor of them, and the heirs and assigns of them,
46 and of the survivors and survivor of them, upon the trust and confidence aforesaid, all the estate, right, title, interest, use, possession, property, claim, and demand whatsoever further of them, the said Robert Morris and Mary, his wife, John Nicholson and Hannah, his wife, and James Greenleaf, and of each of them, either in law or equity, of, in, and to the tracts of land and premises aforesaid, as they, the said Thomas Willing, John Nixon, and John Barclay, or the survivors or survivor of them, or the heirs or assigns of them, or of the survivors or survivor of them, or their or either of their counsel learned in the law, shall reasonably devise, advise, or require; and the said Robert Morris, John Nicholson, and James Greenleaf, and their heirs, the said tracts of land, hereditaments, and premises hereby granted or mentioned, or intended so to be, with all and every the appurtenances, unto the said Thomas Willing, John Nixon, and John Barclay, and to the survivors and survivor of them, and to the heirs and assigns of them, and of the survivors and survivor of them, against them, the said Robert Morris, John Nicholson, and James Greenleaf, and their heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim any estate, right, title, or interest whatsoever, of, in, and to the hereby granted premises, or any part thereof, under them, or any or either of them, shall and will well and truly warrant and forever defend by these presents.

In witness whereof the said parties to these presents have the

47 hereunto interchangeably set their hands and seals, dated day and year first above written.

ROBERT MORRIS. [L. S.]
MARY MORRIS. [L. S.]
JNO. NICHOLSON. [L. S.]
HANNAH NICHOLSON. [L. S.]
JAMES GREENLEAF. [L. S.]

Sealed and delivered in the presence of us, nineteen words in the 44th line having first been written on an erasure before the execution.

GEORGE EDDY.
MATTH. CLARKSON.
GEORGE A. BAKER.

Received on the day of the date of the above-written indenture of the above-named Thomas Willing, John Nixon, and John Barclay, esquires, the sum of five shillings, lawful money of Pennsylvania, being the consideration money above mentioned.

Witness our hands.

ROBERT MORRIS.
JNO. NICHOLSON.
JAMES GREENLEAF.

Witnesses present at signing:
GEORGE EDDY.
GEORGE A. BAKER.

CITY OF PHILADELPHIA, *ss:*

Before me, Matthew Clarkson, esquire, mayor of the city of Philadelphia, in the Commonwealth of Pennsylvania, personally appeared Robert Morris and Mary, his wife; John Nicholson and Hannah, his wife; and James Greenleaf, the grantors in the above-written indenture named, and in due form of law acknowledged the same to be their and each of their act and deed, and desired the same may be recorded as such;
48 the said Mary, and the said Hannah, thereunto consenting, they being each of full age, secretly and apart from their respective husbands by me examined, and the contents thereof first made known unto them.

In testimony whereof I, the said mayor, have to these presents set my hand and caused the seal of the mayoralty of said city to be thereunto affixed, the fifth day of March, anno Domini one thousand seven hundred and ninety-five.

{ THE SEAL OF THE CITY OF PHILADELPHIA. }

MATTH. CLARKSON, *Mayor.*

[GREAT SEAL OF THE COMMONWEALTH OF PENNSYLVANIA.]

Tho. Mifflin.

Thomas Mifflin, governor of the Commonwealth of Pennsylvania, to all to whom these presents shall come, greeting:

Know ye that Matthew Clarkson, esquire, whose name is subscribed to the foregoing instrument of writing, was at the time of subscribing the same, and now is, mayor of the city of Philadelphia, in said Commonwealth, duly appointed and commissioned, and full faith and credit is and ought to be given him accordingly.

Given under my hand and the great seal of the State, at Philadelphia, the nineteenth day of March, in the year of our Lord one thousand seven hundred and ninety-five, and of the Commonwealth the nineteenth.

By the governor:

A. J. DALLAS, *Secretary.*

Nos.	Dates.	What instrument.	COUNTIES OF—									
			Monong'la.	Washington.	Harrison.	Ohio.	Randolph.	Montg'm'ry.	Greenbrier.	Russell.	Kenhawa.	Totals.
			Acres.	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*
2 a 13	1786, Jan. 30, July 19, May 5, and 1787, Ap'l 24.	12 patents to Benjamin Say, in all for 19,700 acres, Monongalia; 10,000 acres, Washington; and 6,500 acres, Harrison.										
15	1794, April 2.....	Deed Benjamin Say to Levi Hollingsworth for the above lands, among others.										
16	" May 24.....	Deed Levi Hollingsworth to Robert Morris for the above lands, among others.....	19, 700	10, 000	6, 500	.....	.....	.....	.....	.....	.....	36, 200
24 a 33	1785, Dec. 22	10 patents to Levi Hollingsworth for 1,000 acres each, in Ohio County, is 10,000 acres.										
34	1794, June 4.....	Deed Levi Hollingsworth to Robert Morris for the same	.....	.....	.....	10, 000	.....	.....	.....	.....	.....	10, 000
35 a 42	1790, Mar. 8.....	8 patents to Michael Gratz, in all for 18,825 acres in Randolph County.										
43	1794, June 6.....	Deed Michael Gratz & wife to Robert Morris, for the same.....	.....	.....	.....	.....	18, 825	.....	.....	.....	.....	18, 825
46	1787, Jan. 13	1 patent to Michael Gratz and Charles Willing, for 2,000 acres, in Montgomery County.										
47	1788, Oct. 1.....	Deed Elizabeth Hannah Willing and others to Michael Gratz, for inter alia Charles Willing's estate and property in said 2,000 acres.										
48	1794, June 10.....	Deed Michael Gratz and wife to Robert Morris, for the same	.....	.....	.....	.....	.....	2, 000	.....	.....	.....	2, 000
50 a 53	1787, July 24.....	4 patents to Moses Bartram, in all for 10,000 acres, in Washington County										
56	1794, April 2	Deed Moses Bartram to Levi Hollingsworth for the above lands, among others.										
57	" June 23.....	Deed Levi Hollingsworth to Robert Morris for the above lands, among others	10, 000	.....	.....	.....	.....	.....	.....	.....	.....	10, 000
63	1785, Nov. 19.....	1 patent to Hugh Lennox, for 10,000 acres, in Harrison County.										
50 64	1794, April 2	Deed Hugh Lennox to Levi Hollingsworth, for the same.										
65	1794, July 1.....	Deed Levi Hollingsworth to Robert Morris for the same.....	.....	.....	10, 000	.....	.....	.....	.....	.....	.....	10, 000
68	1787, Jan. 12	1 patent to Michael Gratz and Charles Willing, for 3,000 acres, in Greenbrier County.										
47	1788, Oct. 1	Deed Elizabeth Hannah Willing and others to Michael Gratz, for inter alia Charles Willing's estate and property in said 3,000 acres.										
69	1794, July 3.....	Deed Michael Gratz and wife to Robert Morris for the above.....	.....	.....	.....	.....	.....	.....	3, 000	.....	.....	3, 000
70-71	1788, March 15	2 patents to Levi Hollingsworth and Andrew Bonmer, for 5,000 acres, in Washington County.										

72	1794 July 4	Deed Levi Hollingsworth to Robert Morris for the same		5,000								5,000
73 a 77	1786, Feb'y 20	5 patents to Henry Winkoop and Paul Siemen, for in all 20,000 acres, in Ohio County.										
78	1788, Feb'y 22	Deed Paul Siemen to Joshua Byron, George Schroeppel, Herman Joseph Lombaert, and Thomas Billington, for the same.										
79	1794, July 1	Deed Joshua Byron, George Caspar Schroeppel, and Thomas Billington to Levi Hollingsworth, for the same.										
80	" " 3	Deed Levi Hollingsworth to Robert Morris, for the same				20,000						20,000
81-82	1787, Nov. 1	2 patents to Levi Hollingsworth, amounting to 25,000 acres, in Montgomery County.										
	" Dec. 10											
83	1785, Dec. 15	87 patents to Levi Hollingsworth and Dorsey Pentecost, for in all 87,000 acres, same county.										
a 169	1786, Dec. 9											
205	1787, July 24	Deed of partition Dorsey Pentecost, to Levi Hollingsworth, for said 87,000 acres, among others.										
206 a 236	1786, Feb. 3, 8	31 patents to Bernard Gratz and Michael Gratz, for in all 31,000 acres, in same county.										

51

			COUNTIES OF—									
			Monong'la.	Washing'n.	Harrison.	Ohio.	Randolph.	Mont'g'ry.	Greenbrier.	Russell.	Kenhawa.	Totals.
			Acres.	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*
237	1791, Jan. 20	Deed Bernard Gratz and Michael Gratz to Levi Hollingsworth, for said 31,000 acres.										
238	1794, July 5	Deed Levi Hollingsworth to Robert Morris for the above lands, among others						143,000				143,000
239 a 300	1785, Dec. 15 / 1786, Dec. 9	62 patents to Levi Hollingsworth and Dorsey Pentecost, in all for 62,000 acres, in Montgomery County.										
317	1787, July 24	Deed of partition Levi Hollingsworth, to Dorsey Pentecost, for said 62,000 acres, among others.										
318	" Aug. 27	Letter of attorney, Dorsey Pentecost, to Levi Hollingsworth for sale of ditto, among other lands.										
319	1794, July 8	Deed Dorsey Pentecost, by his attorney, Levi Hollingsworth, to Robert Morris for ditto, among others						62,000				62,000
320	1786, Nov. 13	1 patent to Benjamine Lodge, for 13,026½ acres, in Montgomery County.										
321	1794, April 2	Deed Benjamin Lodge to Robert Morris, for the same						13,026½				13,026½
322	1786, Nov. 13	1 patent to James Carnoghan, for 30,000 acres, in Montgomery County.										
323	1794, April 2	Deed James Carnoghan to Robert Morris, for the same						30,000				30,000
324	1786, Nov. 13	1 patent to James Carnoghan, for 30,000 acres, in Montgomery County.										

325	1794, May 2	Deed James Carnoghan to Robert Morris, for the same						30,000				30,000
326	1788, Mar. 26	2 patents to Simon Nathan, making together 20,000 acres, in Rus-										
327	" " 27	sell County.										
328	1787, Dec. 1	Assignment Simon Nathan to Matthew Clarkson and others, of all his estate.										
52 329	1787, Dec. 10	Assignment Matthew Clarkson and others to Robert Ralston, of the same.										
330	1794, Mar. 14	Deed Robert Ralston to Peter Lohea, for the above 20,000 acres										
331	" " 15	Deed Peter Lohea to Robert Morris, for the same								20,000		20,000
332	1794, Feb'y 24	19 patents to John Beckley, in all for 20,555 acres, in Greenbrier										
a 350	" " 25, 26	County.										
351	" April 20	Deed John Beckley to Robert Morris for the same							20,555			20,555
352	1786, April 22, 24,	14 grants William Semple, for 16,000 acres, in Greenbrier County;										
a 365	26, 27, 28; June 26 & July 6.	and 21,999¼ acres, in Montgomery County.										
366	1786, Dec. 12	Deed William Semple to Caspar, John, and Abraham Singer, for the same.										
367	1786, June 26	2 patents to William Semple and William Pickles, for 8,000 acres,										
368	" "	in Montgomery County.										
369	" Oct. 16	Deed poll Jonas Canby, administrator of William Pickles to Wil- liam Semple.										
370	1788, Sept. 3	Deed William Semple to Caspar, John, and Abraham Singer.										
371	1789, July 20	Deed Caspar Singer and wife to John Singer, for all of said Cas- par Singer's estate.										
372	1791, Mar. 22	Deed John Singer to Abraham Singer, for one moiety thereof.										
373	1794, Mar. 19	Deed John Singer and wife, and Abraham Singer to Robert Mor- ris, for the above						29,999½	16,000			45,999½
374	1786, Feb'y 10	14 patents to Albert Gallatin, in all for 20,860 acres, in Harrison,										
a 387		now Kenhawa County.										
388	" Mar. 25	1 ditto to ditto, for 1,555½ acres, in Harrison County.										

53

			COUNTIES OF—									
			Monongalia.	Washingt'n.	Harrison.	Ohio.	Randolph.	Montg'y.	Greenbrier.	Russell.	Kenhawa.	Totals.
			Acres.	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*
389	1786, Mar. 25, 29	6 ditto to Savary De Valconlon and Albert Gallatin, for 13,000										
a 394	" May 9	ditto.										
395	1788, Mar. 17	1 ditto, ditto, ditto, for 16,800 acres, Greenbrier County.										
396	1786, Feb'y 10	3 grants to Savary De Valconlon, for 4,000 acres, in Harrison										
a 398		County.										

399 a 402	1787, Mar. 9..... 1788, Mar. 17.....	4 patents to S. De Valconlon and A. Gallatin, for 18,200 acres, in Harrison County, whereof A. Gallatin's moiety is 9,100 acres.											
403 a 411	1786, Feb'y 10.....	9 patents to S. De Valconlon, patented in Harrison, lying in Kenhawa County, 13,700 acres.											
412	1791, Aug. 9.....	Deed Savary De Valconlon to Albert Gallatin, for divers lands patented in his own name, and for his moiety of divers lands patented in their joint names.											
413	1794, Mar. 25.....	Letter of attorney Savary De Valconlon to Albert Gallatin, for sale of divers lands.											
414	" May 7.....	Deed Albert Gallatin and wife, and Savary De Valconlon, by his attorney, Albert Gallatin, to Robert Morris, for the aforesaid lands.....	.....	.....	27, 655¼	.....	.....	.....	16, 800	.....	34, 560	79, 015¼
		Total conveyed by the within indenture.....	19, 700	25, 000	44, 155½	30, 000	18, 825	310, 025¾	56, 355	20, 000	34, 560	558, 621¼

54

55 Recorded in the office for recording deeds, &c., for the city and county of Philadelphia, in deed book No. 61, page 28, &c. Witness my hand and seal of office this sixth day of September, anno Domini 1796.

[L. S.] MATH. IRWIN, *Recorder.*

VIRGINIA, *to wit:*

At a general court held at the capitol in Richmond the 14th day of November, 1811, this indenture, together with the certificate from under the hand and seal of Matthew Clarkson, mayor of the city of Philadelphia, thereafter written, on the motion of Thomas Willing, John Nixon, and John Barclay, parties hereto, was ordered to be recorded.

Teste: PEYTON DREW, *Cl. Cou.*

Order book No. 44, page 524, &c.

VIRGINIA: CABELL COUNTY COURT CLERK'S OFFICE, *June 20th*, 1855.

The foregoing deed was this day presented to me, the clerk of Cabell County court, and the same, together with the several certificates thereon endorsed, was this day admitted to record in deed book K, page 456, &c.

Teste: JOHN SAMUELS, *Clerk.*

VIRGINIA: JACKSON COUNTY COURT CLERK'S OFFICE, *October 5th*, 1858.

56 The foregoing deed was this day presented to me, the clerk of Jackson County court, and the same, together with the several certificates, and all memorandums thereon endorsed previous to this date, was this day admitted to record in deed book No. 12, page 530, &c., in said office.

Teste: BENJ. WRIGHT, *Clk.*

Bill of exceptions continued.

The said plaintiffs also gave in evidence a paper writing signed by Thomas Willing, dated 19th December, 1806, in the words and figures following, to wit:

"I, Thomas Willing, of the city of Philadelphia, do hereby declare and make known unto all whom it doth or may concern, that immediately on my receiving notice that Robert Morris, John Nicholson, and James Greenleaf had conveyed certain estates of land to John Nixon, John Barclay, and myself, in trust for the North American Land Company, I did positively refuse to accept or to act under the trust so intended to be created, and that I have at no time since accepted the said trust, or acted in any wise as trustee in relation thereto.

Witness my hand this nineteenth day of December, one thousand eight hundred and six.

THOS. WILLING.

STATE OF PENNSYLVANIA, *City of Philadelphia, sct:*

Be it remembered that on the twenty-first day of September, A. D. 1843, before me, Benjamin Gerhard, esquire, commissioner of the State of Georgia, &c., for the State of Pennsylvania, at the city of Philadelphia aforesaid, personally appeared Richard Willing, who, being
57 by me duly sworn, deposes and says that he is a son of the late Thomas Willing, esquire, formerly president of the Bank of the United States in this city, and is well acquainted with his handwriting, having often seen him write; that the signature "Thos. Willing" to the annexed written declaration of refusal of trust, dated 19th December, 1806, subscribed, is the true and genuine signature of the said Thomas Willing.

RICH'D WILLING.

[SEAL.] B. GERHARD, *Com'r.*

At the same place, on this twenty-second day of September, 1843, personally appeared Joseph Roberts, who, being by me duly sworn, deposes and says that he is well acquainted with the handwriting of the late Thomas Willing, esquire, formerly president of the Bank of the United States in this city, having often seen him write, and that the signature "Thos. Willing" to the annexed written declaration of refusal of trust, dated December 19th, 1806, subscribed, is the true and genuine signature of the said Thomas Willing.

JOSEPH ROBERTS.

The words "time and" being first erased and the words "twenty-second day of September, 1843," being first interlined.

B. GERHARD, *Com'r.* [SEAL.]

STATE OF PENNSYLVANIA, *City of Philadelphia, sct:*

Be it remembered that on this twenty-first day of September,
58 A. D. 1843, before me, J. A. Phillips, commissioner appointed under the act of the general assembly of the State of South Carolina of 17th of December, 1834, to take acknowledgments or proofs of deeds, &c., in the State of Pennsylvania, personally appeared Richard Willing, of said city, who, being by me duly sworn, deposes and says that he is a son of the late Thomas Willing, esq., formerly president of the Bank of the United States in this city, and is well acquainted with

his handwriting, having often seen him write; that the signature "Thos. Willing" to the above-written declaration of refusal of trust, dated 19th Dec'r, 1806, subscribed, is the true and genuine signature of the said Thomas Willing.

RICH'D WILLING.

At the same time and place personally appeared Joseph Roberts, who, being by me duly sworn, deposes and says that he is well acquainted with the handwriting of the late Thomas Willing, esquire, formerly president of the Bank of the United States in this city, having often seen him write; and that the signature "Thos. Willing" to the above-written declaration of refusal of trust, dated 19th Dec'r, 1806, subscribed, is the true and genuine signature of the said Thomas Willing.

JOSEPH ROBERTS.

Sworn and subscribed before me the day & year aforesaid. Witness my hand and seal.

J. A. PHILLIPS, *Com'r.* [SEAL.]

59 COMMONWEALTH OF PENNSYLVANIA,
City of Philadelphia, sst:

Be it remembered that on this twenty-first day of September, A. D. 1843, before me, Edward Hurst, notary public for the Commonwealth of Pennsylvania, duly commissioned and sworn, residing in the city of Philadelphia, and by law authorized to administer oaths and affirmations, personally appeared Richard Willing, who, being by me duly sworn, deposes and says that he is a son of the late Thomas Willing, esquire, formerly president of the Bank of the United States in this city, and is well acquainted with his handwriting, having often seen him write, and that the signature "Thos. Willing" to the above-written declaration of refusal of trust, dated 19th December, 1806, subscribed, is the true and genuine signature of the said Thomas Willing.

RICH'D WILLING.

At the same time and place personally appeared Joseph Roberts, who, being by me duly sworn, deposes and says that he is well acquainted with the handwriting of the late Thomas Willing, esquire, formerly president of the Bank of the United States in this city, having often seen him write; and that the signature "Thos. Willing" to the above-written declaration of refusal of trust, dated 19th Dec'r, 1806, subscribed, is the true and genuine signature of the said Thomas Willing.

JOSEPH ROBERTS.

60 Sworn and subscribed before me, the said notary public, at the city of Philadelphia, this twenty-first day of September, A. D. 1843, which I attest under my hand and notarial seal.

[NOTARIAL SEAL.] EDWARD HURST, *Not. Pub.*

STATE OF PENNSYLVANIA, *City of Philadelphia, sst:*

Be it remembered that on this twenty-first day of September, A. D. 1843, before us, Joel Cook and Peter Hay, aldermen of the said city, and possessing all the powers and authorities of justices of the peace within the said city, personally appeared Richard Willing, who, being by us duly sworn, deposes and says that he is a son of the late Thomas Willing, esquire, formerly president of the Bank of the United States in this city, and is well acquainted with his handwriting, having often seen

him write; that the signature "Thos. Willing" to the annexed written declaration of refusal of trust, dated 19th December, 1806, subscribed, is the true and genuine signature of the said Thomas Willing.

RICH'D WILLING.

At the same time and place personally appeared Joseph Roberts, who, being by us duly sworn, deposes and says that he is well acquainted with the handwriting of the late Thomas Willing, esquire, formerly president of the Bank of the United States in this city, and
61 that he has often seen him write; that the signature "Thos. Willing" to the annexed written declaration of refusal of trust subscribed, dated 19th December, 1806, is the true and genuine signature of the said Thomas Willing.

JOSEPH ROBERTS.

Sworn and subscribed before us this 21st day of September, A. D. 1843.

JOEL COOK, [SEAL.]
Alderman and ex officio Justice of the Peace.
PETER HAY, [SEAL.]
Ald'n & ex officio Justice of the Peace.

STATE OF PENNSYLVANIA, *City of Philadelphia, ss:*

I, Richard Palmer, jr., esq., prothonotary of the court of common pleas for the county of Philadelphia, do hereby certify that Joel Cook and Peter Hay, esq'r's, whose names are to the above proofs by Richard Willing and Joseph Roberts subscribed, at the time of taking such proof were, and now are, aldermen of the city of Philadelphia, and as such ex officio justices of the peace in & for said city, and that full faith and credit is to be given to their and each of their acts as such.

{ SEAL OF COURT OF COMMON PLEAS. } In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court of common pleas for the county of Philadelphia, this twenty-second day of
62 September, A. D. one thousand eight hundred and forty-three.

R. PALMER, JR., *Prothonotary.*

This signature of "Thos. Willing" proved in due form of law this twenty-third day of March, A. D. 1844, before me.

JOHN WM. WALLACE,
Examiner of the Supreme Court of Penn'a.

CABELL COUNTY COURT CLERK'S OFFICE,
March 29th, 1856.

VIRGINIA:

The writing hereto annexed was this day presented to me, the clerk of Cabell County court, together with the certificates of proof; the same is admitted to record.

Teste: JOHN SAMUELS, *Clerk.*

Bill of exceptions continued.

The plaintiffs also gave in evidence an act of the general assembly of Virginia, passed on the 13th of February, 1844, entitled "An act for the relief of James Dundas and Benjamin Kugler," &c., in the words and figures following, to wit: (It is agreed by the parties that this act need

not be copied in this record, but may be read from the published acts of the general assembly of Virginia.) They also gave in evidence a deed from John M. Barclay and others to James Dundas and Benjamin Kugler, dated the seventeenth day of June, one thousand eight hun-
63 dred and forty-five, in the words and figures following, to wit:

Deed of Barclay & others to Dundas & Kugler.

This indenture, made the seventeenth day of June, in the year of our Lord one thousand eight hundred and forty-five, between Clement C. Biddle and Mary, his wife, (late Mary Barclay,) John M. Barclay, James J. Barclay, Charlotte Barclay, John B. Biddle, George W. Biddle, and Chapman Biddle, of the city of Philadelphia, in the State of Pennsylvania, and James Cochran, of Oswego, in the State of New York, all of the first part, and James Dundas and Benjamin Kugler, also of the said city of Philadelphia, of the other part; whereas James Dundas and Benjamin Kugler, surviving trustees and managers of the North American Land Company, filed their bill in equity in the supreme court of Pennsylvania, in and for the eastern district, of December term, A. D. 1843, No. 4, against Clement C. Biddle, and Mary, his wife, late Barclay, John M. Barclay, Harriet Barclay, James J. Barclay, Charlotte Barclay, and James Cochran, in which said bill they alleged that, by certain articles of agreement indented, made the twentieth day of February, A. D. 1795, by and between the Honorable Robert Morris, esquire, of the city of Philadelphia, John Nicholson, esquire, of the said city, and James Greenleaf, esquire, consul of the United States at Amsterdam, but then in New York, of the one part, and those who should become purchasers, owners, or holders of shares in the North American Land Company of the other part, (recorded in the office for record-
64 ing deeds in and for the city and county of Philadelphia, in deed book No. 43, page 277, &c.,) an association was formed styled "The North American Land Company;" that in pursuance of the said articles the said Robert Morris and Mary, his wife, John Nicholson and Hannah, his wife, and the said James Greenleaf, by indenture dated the fifth day of March, A. D. 1795, (recorded at a general court held at the capitol in Richmond, Virginia, on the fourteenth day of November, 1811, in order book No. 44, page 524, &c.,) granted and conveyed divers large tracts of land situate in the State of Virginia, amounting in the whole to five hundred and fifty-eight thousand six hundred and twenty one and one-fourth acres, unto Thomas Willing, of the city of Philadelphia, then president of the Bank of the United States; John Nixon, of said city, then president of the Bank of North America; and John Barclay, of said city, then president of the Bank of Pennsylvania, and to the survivors and survivor of them, and to the heirs and assigns of them, and of the survivors and survivor of them, in trust, to convey the same agreeably to the above-recited articles; that the said Thomas Willing did positively refuse to accept the said trust, and did not at any time act under the same, but that the same was accepted by the said John Nixon and John Barclay; that in conformity with the
65 twenty-eighth article of the above-recited articles of agreement, certain alterations and amendments thereto were, by a constitutional majority of the shareholders of the said North American Land Company, at their annual meeting on the thirty-first day of December, A. D. 1807, agreed to be made by adding to the said articles of agreement the following articles to wit: "It being found, on an experience of eleven years, that the business of the North American Land Company cannot

be conducted in the manner marked out in the articles of agreement and association of the 20th of February, 1795, and that without the most prompt and efficacious remedies, the whole stock of the said company will be irrecoverably lost, it is now therefore agreed by a constitutional majority of the shareholders, in conformity with the principles of the twenty-eighth article of said agreement, as follows: 1st. That all the business and concerns of the North American Land Company shall henceforward be managed and conducted by Henry Pratt, John Ashley, John Vaughan, Robert Porter, and John Miller, junior, or a majority of them, their survivors, or a majority of such survivors, who shall have full, unlimited, and uncontrolled powers to barter, sell, or convey all or any part of the land or property of the said company, on whatever terms and conditions they may judge fit, and also to act in all possible cases regarding the affairs of the company as they may deem most expedient and proper. 2nd. That John
66 Nixon and John Barclay, the trustees of the company, shall have power to transfer or convey, and shall transfer or convey, to the said Henry Pratt, John Ashley, John Vaughan, Robert Porter, and John Miller, junior, as aforesaid, by deed of quitclaim, or other competent conveyance, all the lands and property of the said company vested in them, either in law or equity, for the benefit of the company, and also all shares of stock of the company that may have been transferred to them or in their names, under the twenty-third article of the agreement aforesaid, and that the said John Nixon and John Barclay shall, on making such competent conveyances or transfers, forever after be held harmless and blameless for any and all neglects or pretended neglects, and for any and all doings which may have happened or occurred while they were considered the trustees of the company. 3rd. That all the shares of stock that may be transferred under the preceding article shall be considered as held by the before-named managers of the company, in manner as aforesaid, for the benefit of the stockholders of the company, in lieu of arrearages of interest, and to be shared among them pro rata. 4th. That whenever the lands and property of the company shall have been all sold, and the conditions of sale complied with, the said managers of the company shall, by public advertisement, call a meeting of the stockholders and shall divide among them
67 the proceeds of the same, according to their respective interests therein. 5th. That whatever may in any of the articles of the aforesaid agreement of twentieth February, 1795, prove repugnant to, or incompatible with, the supplementary articles now agreed to shall be and is henceforward declared to be forever rescinded and annulled." That the said John Nixon, in pursuance of the above-recited articles of agreement and amendments thereto, by deed dated the twenty-seventh day of April, A. D. 1808, (recorded in the office for recording of deeds, in and for the city and county of Philadelphia, in miscellaneous book E. F. No. 1, page 364, &c.,) conveyed all his estate in the lands aforesaid unto the said Henry Pratt, John Ashley, John Vaughan, Robert Porter, and John Miller, junior, and their heirs, as joint tenants and not as tenants in common, in trust for the said North American Land Company, agreeably to the above-recited articles of agreement and amendments thereto, and the said John Barclay did not join in said conveyance; that the above-mentioned John Vaughan and Robert Porter, then surviving the above-named Henry Pratt, John Ashley, and John Miller, junior, by deed dated the 30th day of April, A. D. 1838, conveyed all their estate in the lands aforesaid unto Benjamin Tilghman, of the city of

Philadelphia, and his heirs, in trust, to reconvey the same unto the said John Vaughan, Robert Porter, James Dundas, Henry Nixon, and Benjamin Kugler, all of the city of Philadelphia, and the said
68 Benjamin Tilghman, by deed dated the first day of May, A. D. 1838, endorsed upon the deed last above mentioned, conveyed all his estate in the said lands unto the said John Vaughan, Robert Porter, James Dundas, Henry Nixon, and Benjamin Kugler, and the survivors and survivor of them and their heirs, and the heirs of such survivors or survivor, in trust, for the same uses as the said John Vaughan and Robert Porter had and held the same at and immediately before the execution of the above-recited conveyance to the said Benjamin Tilghman; that the said John Barclay departed this life on or about the eighth day of August, A. D. 1816, having survived the said John Nixon, and leaving issue five children, to wit, Mary, (intermarried with Clement C. Biddle,) John M. Barclay, Harriet Barclay, James J. Barclay, and Charlotte Barclay, and one grandchild, Gertrude Eleanor Cochran, (only child of Eleanor Porter Barclay, daughter of the said John Barclay, who intermarried with James Cochran, and died during the lifetime of her father, the said John Barclay) whereupon so much of the trust estate created by the deed of the fifth day of March, A. D. 1795, first above recited, as was in the said John Barclay, at the time of his death, became vested in his heirs at law, to wit, the said Mary Biddle, (late Barclay,) John M. Barclay, Harriet Barclay, James J. Barclay, Charlotte Barclay, Gertrude Eleanor Cochran, and Clement C. Biddle, in
69 right of his wife, the said Mary; and the said Gertrude Eleanor Cochran having since then died intestate and unmarried, so much of the said trust estate as was in her at the time of her death became vested in her father, the said James Cochran, and in her next of kin, to wit, the several children of John Barclay above named; that the above-named James Dundas and Benjamin Kugler, (then surviving the above-named John Vaughan, Robert Porter, and Henry Nixon,) had requested from the said several defendants a conveyance of the said trust estate agreeably to the above-recited articles and amendments thereto, and that the said defendants had refused so to convey, or to do any act in the premises, except under the decree of a court of equity; wherefore the said complainants prayed relief against the said refusal to convey of the said defendants; and whereas the said defendants, by their answer, averred that it was unknown to them whether the said trust was ever accepted or acted upon by the said John Barclay in his lifetime, or whether or how far it had descended upon them, or whether they had a right to execute the conveyance prayed, and that they were advised not to take any step in the premises, except under the direction of the court; and whereas Harriet Barclay, one of the defendants in said suit, after signing the answer therein, to wit, on or about the fourteenth day of May, A. D. 1844, departed this life, whereupon the said suit was, by bill of revivor and decree thereon, duly revised, and the representatives of the said decedent, to wit, the above-
70 named Mary Biddle, James J. Barclay, Charlotte Barclay, John B. Biddle, George W. Biddle, and Chapman Biddle, were thereby made parties to the said original bill, and whereas on the twenty-ninth day of March, A. D. 1845, at a court of nisi prius then holden, the said cause coming on to be heard upon the bill, answer, exhibits, and report of the master and examiner, and being argued by counsel on each side, the said court did order, adjudge, and decree "that the respondents do forthwith execute and deliver unto the complainants, in

trust, for the North American Land Company, agreeably to the articles of agreement dated twentieth February, 1795, and the amendments thereto as stated in the bill," (being the same articles of agreement and amendments hereinbefore referred to and recited,) "a deed or deeds conveying all the right, title, interest, claim, property, and demand whatsoever of the said respondents at law or in equity of, in, and to all and singular the lands and premises in the said original bill and exhibits specified as vested in the said respondents, as heirs at law of John Barclay, in trust for the North American Land Company, the said deed or deeds to contain a special warranty as against the said respondents, their heirs, and those claiming under them, and to be without further or other covenant or warranty whatsoever;" and whereas the said decree, upon appeal therefrom by the defendants, was, on the fifth day of June, A. D. 1845, upon argument, duly affirmed by the said
71 supreme court in banc: now, this indenture witnesseth that the above-named parties of the first part hereto, in consideration of the premises and of the sum of one dollar, to each of them in hand paid by the said parties of the second part, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have, and each of them hath, granted, bargained, and sold, conveyed, aliened, enfeoffed, released, and confirmed, and, by these presents, do, and each of them doth, grant, bargain, and sell, alien, convey, enfeof, release, and confirm, unto the said James Dundas and Benjamin Kugler, and to the survivor of them, their heirs and assigns, and the heirs and assigns of the survivor, all the estate, right, title, interest, claim, property, and demand whatsoever vested in them, the said parties of the first part, or either of them, as heirs or an heir at law of the above-named John Barclay, deceased, at law, in equity, or otherwise howsoever, of, in, and to all and singular the lands and premises situate in the State of Virginia, which by the above-recited deed, dated the fifth day of March, A. D. 1795, were conveyed by the above-named Robert Morris and wife, John Nicholson and wife, and James Greenleaf, unto the said Thomas Willing, John Nixon, and John Barclay, in trust for the North American Land Company; together with all and singular the rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto
72 belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof, to have and to hold the said lands and premises, with the appurtenances, unto them, the said James Dundas and Benjamin Kugler, and to the survivor of them, their heirs and assigns, and the heirs and assigns of the survivor, to and for the only proper use, benefit, and behoof of them, the said James Dundas and Benjamin Kugler, and of the survivor of them, and of their heirs and assigns, and the heirs and assigns of the survivor, forever; I trust, nevertheless, for, and to the sole use and benefit of, the above-named North American Land Company, agreeably to the above-recited articles of agreement, dated the twentieth day of February, A. D. 1795, as the same were altered and amended on the thirty-first day of December, A. D. 1807, in the manner in the recital of this indenture fully set forth, and to and for no other use, intent, or purpose whatsoever; and the said parties of the first part do hereby covenant and agree that the premises hereby granted, with the appurtenances, unto the said James Dundas and Benjamin Kugler, and the survivor of them, their and his heirs and assigns, against them, the said parties of the first part, and against all persons claiming or to claim by, from, or under them, they will warrant and forever defend by these presents.

In witness whereof the said parties have interchangeably set their

hands and seals hereunto, dated the day and year first above
73 written.

CLEMENT C. BIDDLE.	[L. S.]
MARY BIDDLE.	[L. S.]
C. BARCLAY.	[L. S.]
JAMES J. BARCLAY.	[L. S.]
JAMES COCHRAN.	[L. S.]
J. B. BIDDLE.	[L. S.]
JOHN M. BARCLAY.	[L. S.]
GEORGE W. BIDDLE.	[L. S.]
CHAPMAN BIDDLE.	[L. S.]

Sealed and delivered in the presence of us, by all the grantors above named, except by James Cochran—

B. GERHARD.
W. M. TILGHMAN.
JOHN BINNS.

Sealed and delivered by James Cochran, in the presence of us—

ALEX. H. MALCOLM.
ELIZA A. SHERMAN.
W. M. TILGHMAN.

STATE OF PENNSYLVANIA, *City of Philadelphia, ss:*

I, John Binns, a commissioner appointed for the State aforesaid, under an act of the State of Virginia, entitled "An act authorizing the appointment of commissioners to take depositions and affidavits, the acknowledgment of deeds and instruments of writing, under seal, out of the State of Virginia," do hereby certify that Clement C. Biddle, Mary Biddle, John M. Barclay, James J. Barclay, Charlotte Barclay, John B. Biddle, George W. Biddle, and Chapman Biddle, parties to a certain deed bearing date the seventeenth day of June, A. D. 1845, and
74 hereto annexed, personally appeared before me in my State aforesaid, and acknowledged the same to be their, and each of their, act and deed, and desired me to certify the said acknowledgment to the clerks of the proper courts in the State of Virginia, in order that the said deed may be recorded.

Given under my hand and seal this seventeenth day of June, A. D. 1845.

JOHN BINNS, *Com's'r.* [L. S.]

STATE OF NEW YORK, *County of Oswego, ss:*

Be it remembered that on this twentieth day of June, A. D. 1845, before us, John W. P. Allen and Daniel Allen, justices of the peace in and for said county, personally appeared James Cochran, one of the parties to a certain deed bearing date the seventeenth day of June, A. D. 1845, and hereto annexed, and acknowledged the same to be his act and deed, and desired us to certify the said acknowledgment to the clerks of the proper courts in the State of Virginia, in order that the said deed may be recorded.

Given under our hands and seals at the county aforesaid the day and year first above written.

J. W. P. ALLEN, [SEAL.]
Justice of the Peace.
DANIEL ALLEN, [SEAL.]
Justice of the Peace.

75 STATE OF NEW YORK, *County of Oswego, ss:*

I, John Carpenter, clerk of the county of Oswego, and clerk of the county courts of said county, and having official cognizance of the facts herein certified, do hereby certify and declare that John W. P. Allen and Daniel Allen, whose names are to the above acknowledgment of James Cochran subscribed, at the time of taking such acknowledgment were, and now are, justices of the peace in and for said county, and that full faith and credit are and ought to be given to all their acts as such.

In testimony whereof I have hereunto set my hand and official seal this twentieth day of June, in the year of our Lord one thousand eight hundred and forty-five.

[L. S.] JOHN CARPENTER, *Clk.*

WOOD COUNTY COURT CLERK'S OFFICE,
September 25th, 1845.

VIRGINIA, *ss:*

This deed of conveyance was this day received by me in my office for the purpose of being recorded, and the same, together with the certificates hereto annexed, is now of record in deed book No. 13, page 574, &c., of the said court.

Teste: JNO. R. MURDOCK, *C. W. C.*

STATE OF PENNSYLVANIA, *City of Philadelphia, ss:*

76 I, John Binns, a commissioner appointed for the State aforesaid, under an act of the State of Virginia, entitled "An act authorizing the appointment of commissioners to take depositions and affidavits, the acknowledgment of deeds and instruments of writing, under seal, out of the State of Virginia," do hereby certify that Mary Biddle, the wife of Clement C. Biddle, parties to a certain deed bearing date the seventeenth day of June, A. D. 1845, and hereunto annexed, personally appeared before me in my State aforesaid, and being examined by me privily and apart from her said husband, and having the deed aforesaid fully explained to her, she, the said Mary Biddle, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and seal this twentieth day of January, A. D. 1846.

JOHN BINNS, *Com'r.* [L. S]

WOOD COUNTY COURT CLERK'S OFFICE,
April 22d, 1846.

VIRGINIA:

This deed of conveyance was this day received by me in my office for the purpose of being recorded, and the same, together with the certificates annexed, is now of record in deed book No. 14, page 1, &c., of the said court.

Teste: JNO. R. MURDOCK, *C. C.*

77 JACKSON COUNTY COURT CLERK'S OFFICE,
Aug't 10th, 1846.

VIRGINIA:

This deed of conveyance was this day received by me in my office for

the purpose of being recorded, and the same, together with the certificates hereto annexed, is of record in said office in deed book No. 6, page 25, &c.

Teste: ANDREW WAUGH, *Clk J. C. C.*

Supreme court of Penn'a, eastern district, of December term, 1843.—No. 4, in equity.

DUNDAS & AL.
vs.
BIDDLE & AL.

This is one of the five deeds referred to by me, in my report of this date, as being in conformity with a decree in the above case, entered on the 29th of March last, and affirmed on the 5th instant, and as such to be executed by the defendants.

Witness my hand and seal this June 12th, A. D. 1845.

JOHN WM. WALLACE, [L. S.]
Master in Chancery.

VIRGINIA:

At a court held for the county of Randolph on the 24th day of March, 1851.

This deed from Clement C. Biddle and others to James Dundas and others, dated the 17th day of June, 1845, was, upon the certificate of the acknowledgment thereof by the persons whose names appear to be signed thereto upon a commission appointed by the governor, in
78 the United States, this day, by the court admitted to record as to the said persons whose names appear to be signed thereto.

A copy. Teste: J. W. CRAWFORD, *Clk.*

CABELL COUNTY COURT CLERK'S OFFICE,
June 20th, 1855.

VIRGINIA:

This deed, from Clement C. Biddle & others to James Dundas & others, was this day presented to me, the clerk of Cabell County court, together with the several certificates thereto annexed, is admitted to record in deed book K, page 450, &c.

Teste: JOHN SAMUELS, *Clk.*

Bill of exceptions continued.

The plaintiffs also gave in evidence a deed from James Dundas and Benjamin Kugler to Lot M. Morrill, dated the first day of December, 1854, in the words and figures following, to wit:

Deed of Dundas & Kugler to Lot M. Morrill.

This indenture, made the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, between James Dundas and Benjamin Kugler, both of the city of Philadelphia, State of Pennsylvania, trustees of the North American Land Company, as hereinafter set forth, of the one part, and Lot M. Morrill, esquire, of Augusta, county of Kennebec, State of Maine, counselor at law, of the other part; whereas Robert Morris, John Nicholson, and James Greenleaf, by deed

79 dated the fifth day of March, A. D. one thousand seven hundred and ninety-five, (recorded in the clerk's office of the general court, at Richmond, Virginia, order book No. 44, page 524, &c.,) conveyed divers lands in the State of Virginia, amounting in the whole to five hundred and fifty-eight thousand six hundred and twenty-one and a quarter acres, unto Thomas Willing, John Nixon, and John Barclay, and the survivors and survivor of them, in fee, in trust for the North American Land Company, as therein set forth; and the said Thomas Willing refused to accept, or to act under, the said trust; and whereas John M. Barclay and others, heirs at law of the said John Barclay, (who survived the said John Nixon,) by deed dated the seventeenth day of June, A. D. one thousand eight hundred and forty-five, (recorded in the clerk's office of the county court of Wood County, Virginia, in deed book No. 14, page 1, &c.,) conveyed all their estate in the said lands unto the above-named James Dundas and Benjamin Kugler in fee, in trust for the said North American Land Company, as therein set forth; and whereas Andrew Moore and John Steele and Andrew Moore, by two several deeds, each dated the twenty-first day of February, A. D. one thousand eight hundred and seven, and intended to be recorded, granted, and conveyed unto James Greenleaf in fee, in trust for the North American
80 Land Company, two certain tracts of land situate in Kanawha County, Virginia, the one containing twenty thousand acres, and the other thirty-two thousand and ninety-seven acres, and Ann Penn Greenleaf and others, (widow and children of the said James Greenleaf,) by deed dated the twenty-fifth day of April, A. D. one thousand eight hundred and forty-four, conveyed all their estate in the said lands unto the above-named James Dundas and Benjamin Kugler in fee, in trust for the said North American Land Company, as therein set forth; and whereas divers of the lands specified in the above-mentioned deed from Robert Morris and others have been sold and conveyed to various persons by the parties of the first part, and the party of the second part hereto hath purchased all the right, title, and interest of the parties of the first part in and to the entire residue of the said lands not heretofore sold and conveyed by the said parties of the first part, and also all their right, title, and interest in and to the lands above referred to, as conveyed to said Greenleaf: now, this indenture witnesseth that the said parties of the first part, trustees as aforesaid, for and in consideration of the sum of twenty-five thousand dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, enfeoffed, released, and confirmed, and, by these presents, do grant, bargain, and sell, alien, enfeoff, release, and confirm, unto the said Lot M.
81 Morrill, his heirs and assigns, all the right, title, interest, claim, property, and demand whatsoever vested in them, the said parties of the first part, trustees as aforesaid, of, in, and to all the lands, tenements, & hereditaments whatsoever mentioned, described, and conveyed, or intended so to be, in and by the above-recited deed from Robert Morris and others, dated the fifth day of March, A. D. 1795, and in and by the two above-recited deeds to James Greenleaf, each dated on the 21st day of February, A. D. 1807, which have not been heretofore sold and conveyed to other persons by the said parties of the first part; to have and to hold the premises hereby granted unto the said Lot M. Morrill, his heirs and assigns, to and for his and their only proper use and behoof forever, and the said parties of the first part do hereby severally covenant and agree that the premises hereby granted unto the said party of the second part, his heirs and assigns, against

them, the said parties of the first part, and against all persons lawfully claiming by, through, from, or under them, they will warrant and forever defend, but against no other persons, and without further or other covenant or warranty whatsoever.

In witness whereof the said parties have hereunto set their hands and seals at Philadelphia the day and year first above written.

JAMES DUNDAS. [SEAL.]
BENJ'N KUGLER. [SEAL.]

82 Signed, sealed, and delivered in the presence of us, the words "Andrew Moore &," being first interlined—
JOHN BINNS.
W. M. TILGHMAN.

STATE OF PENNSYLVANIA, *City of Philadelphia, to wit:*

I, John Binns, a commissioner appointed by the governor of the State of Virginia for the said State of Pennsylvania, certify that James Dundas and Benjamin Kugler, whose names are signed to the writing above, have acknowledged the same before me in my State aforesaid, the said writing bearing date on the first day of December, A. D. one thousand eight hundred and fifty-four.

Given under my hand and official seal this first day of December, A. D. 1854.

[L. S.] JOHN BINNS, *Com'r of Virginia.*

JACKSON COUNTY COURT CLERK'S OFFICE,
14*th September*, 1855.

VIRGINIA:

This day the foregoing deed, with the certificate of acknowledgment thereto annexed, was received in said office, and duly admitted to record therein.

Teste: JAMES GREER, *Clk.*

83 MASON COUNTY COURT CLERK'S OFFICE,
April 30*th*, 1856.

VIRGINIA:

The foregoing deed of conveyance of real estate was this day presented to me in my office aforesaid and together with the certificates of acknowledgment, &c., thereto annexed, admitted to record.

Teste: ANDREW ROSEBERRY, *Clk.*

Bill of exceptions continued.

The plaintiffs also gave in evidence a certificate signed by William F. Taylor, auditor of public accounts of the State of Virginia, dated 22d day of February, 1869, in the words and figures following, to wit:

"liam F. Taylor, auditor of public accounts for the Commonwealth
ia, hereby certify that it appears from the records of my office,
es Dundas & Benjamin Kugler, trustees of the North American
pany, on the 8th day of May, 1845, pursuant to an act of the
sembly of Virginia passed on the 12th day of February,
led "An act for the relief of James Dundas & Benjamin
leemed by the payment of the sum of seventeen hundred
seventy-four dollars and ninety-six cents, into the treasury of the
said Commonwealth of Virginia, & by having entered upon the books

of the commissioner of the revenue of the county of Jackson,
84 formerly in the Commonwealth of Virginia, now in the State of West Virginia, & assessed with all taxes & damages due thereon, and by the payment of the same into the treasury of the Commonwealth, to wit, the sum of seventeen hundred & seventy-four dollars & ninety-six cents, the thirty-two following tracts of land, in all fifty-eight thousand seven hundred & fifteen & one-half acres of land, lying in the said county of Jackson, formerly Mason County, to wit:

1,500	acres	....	Gallatin	survey	.....	No.	3	...	Waters of	Mill Creek.
3,500	"	.....	"	.....	"	"	6	.....	"	"	"
4,000	"	.....	"	.....	"	"	7	.....	"	"	"
1,000	"	.....	"	.....	"	"	8	.....	"	"	"
1,500	"	.....	"	.....	"	"	9	.....	"	"	"
1,555½	"	.....	"	.....	"	"	6	.....	"	"	"
1,500	"	.....	"	.....	"	"	5	.....	"	"	"
1,200	"	.....	"	.....	"	"	7	.....	"	"	"
1,330	"	.....	"	.....	"	"	8	.....	"	"	"
1,000	"	.....	"	.....	"	"	9	.....	"	"	"
1,500	"	.....	"	.....	"	"	10	.....	"	"	"
1,500	"	.....	"	.....	"	"	13	.....	"	"	"
1,500	"	.....	"	.....	"	"	14	.....	"	"	"
1,500	"	.....	"	.....	"	"	15	.....	"	"	"
1,500	"	.....	"	.....	"	"	17	.....	"	"	"
1,500	"	.....	"	.....	"	"	20	.....	"	"	"
1,830	"	.....	"	.....	"	"	22	.....	"	"	"
1,500	"	.....	Savary	..	"	"	4	.....	"	"	"
1,700	"	.....	"	.....	"	"	5	.....	"	"	"
	1,500	"	"	.....	"	"	6	.....	"	"	"
85	1,500	acres	Savary	survey		No.	10	.....	Waters	Mill	Creek.
	1,500	"	"	.....	"	.....	"	12	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	21	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	22	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	7	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	9	.....	"	"	"
1,000	"	.....	"	.....	"	.....	"	17	.....	"	"	"
750	"	part of	Sayre &	Galls		"	10	.....	Ohio River.		
3,350	"	..	"	..	"	.....	"	.....	"	11	.....	Near Ohio River.
4,000	"	Pat. to B. Sayer.....							Waters of Reedy & Sandy.		
2,500	"	Pat. to B. Sayer.....							Waters of Reedy Creek.		

Given under my hand at the auditor's office, in city of Richmond, Va., this 22d day of February, 1869.

WM. F. TAYLOR, *Aud. P. Acc'ts.*

Also another certificate, signed by said Taylor as auditor as aforesaid of same date, in the words and figures following, to wit:

I, William F. Taylor, auditor of public accounts for the Commonwealth of Virginia, hereby certify that I have caused the records of my office to be carefully examined, and that I do not find upon the land-books of the commissioners of the revenue for the counties of Mason and Jackson, formerly in the Commonwealth of Virginia, now in the State of West Virginia, any lands assessed or charged thereon with taxes for the years 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827,
1828, 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1839,
86 & 1840, in the name of the following parties, or any one or more of them, or the heirs of any one or more of them, to wit, John

them, the said parties of the first part, and against all persons lawfully claiming by, through, from, or under them, they will warrant and forever defend, but against no other persons, and without further or other covenant or warranty whatsoever.

In witness whereof the said parties have hereunto set their hands and seals at Philadelphia the day and year first above written.

JAMES DUNDAS. [SEAL.]
BENJ'N KUGLER. [SEAL.]

82 Signed, sealed, and delivered in the presence of us, the words "Andrew Moore &," being first interlined—
JOHN BINNS.
W. M. TILGHMAN.

STATE OF PENNSYLVANIA, *City of Philadelphia, to wit:*

I, John Binns, a commissioner appointed by the governor of the State of Virginia for the said State of Pennsylvania, certify that James Dundas and Benjamin Kugler, whose names are signed to the writing above, have acknowledged the same before me in my State aforesaid, the said writing bearing date on the first day of December, A. D. one thousand eight hundred and fifty-four.

Given under my hand and official seal this first day of December, A. D. 1854.

[L. S.] JOHN BINNS, *Com'r of Virginia.*

JACKSON COUNTY COURT CLERK'S OFFICE,
14th September, 1855.

VIRGINIA:

This day the foregoing deed, with the certificate of acknowledgment thereto annexed, was received in said office, and duly admitted to record therein.

Teste: JAMES GREER, *Clk.*

83 MASON COUNTY COURT CLERK'S OFFICE,
April 30th, 1856.

VIRGINIA:

The foregoing deed of conveyance of real estate was this day presented to me in my office aforesaid and together with the certificates of acknowledgment, &c., thereto annexed, admitted to record.

Teste: ANDREW ROSEBERRY, *Clk.*

Bill of exceptions continued.

The plaintiffs also gave in evidence a certificate signed by William F. Taylor, auditor of public accounts of the State of Virginia, dated 22d day of February, 1869, in the words and figures following, to wit:

I, William F. Taylor, auditor of public accounts for the Commonwealth of Virginia, hereby certify that it appears from the records of my office, that James Dundas & Benjamin Kugler, trustees of the North American Land Company, on the 8th day of May, 1845, pursuant to an act of the general assembly of Virginia passed on the 12th day of February, 1844, entitled "An act for the relief of James Dundas & Benjamin Kugler," redeemed by the payment of the sum of seventeen hundred and seventy-four dollars and ninety-six cents, into the treasury of the said Commonwealth of Virginia, & by having entered upon the books

of the commissioner of the revenue of the county of Jackson,
84 formerly in the Commonwealth of Virginia, now in the State of West Virginia, & assessed with all taxes & damages due thereon, and by the payment of the same into the treasury of the Commonwealth, to wit, the sum of seventeen hundred & seventy-four dollars & ninety-six cents, the thirty-two following tracts of land, in all fifty-eight thousand seven hundred & fifteen & one-half acres of land, lying in the said county of Jackson, formerly Mason County, to wit:

1,500	acres	....	Gallatin	survey	.....	No.	3	...	Waters	of	Mill Creek.
3,500	"	.....	"	.....	"	.....	"	6	.....	"	"	"
4,000	"	.....	"	.....	"	.....	"	7	.....	"	"	"
1,000	"	.....	"	.....	"	.....	"	8	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	9	.....	"	"	"
1,555½	"	.....	"	.....	"	.....	"	6	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	5	.....	"	"	"
1,200	"	.....	"	.....	"	.....	"	7	.....	"	"	"
1,330	"	.....	"	.....	"	.....	"	8	.....	"	"	"
1,000	"	.....	"	.....	"	.....	"	9	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	10	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	13	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	14	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	15	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	17	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	20	.....	"	"	"
1,830	"	.....	"	.....	"	.....	"	22	.....	"	"	"
1,500	"	.....	Savary	..	"	.....	"	4	.....	"	"	"
1,700	"	.....	"	.....	"	.....	"	5	.....	"	"	"
	1,500	"	"	.....	"	.....	"	6	.....	"	"	"
85	1,500	acres	Savary	survey		No.	10	.....	Waters	Mill	Creek.
	1,500	"	"	.....	"	.....	"	12	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	21	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	22	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	7	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	9	.....	"	"	"
1,000	"	.....	"	.....	"	.....	"	17	.....	"	"	"
750	"	part of	Sayre &	Galls		"	10	.....	Ohio	River.	
3,350	"	..	"	..	"	.....	"	.....	"	11	.....	Near Ohio River.
4,000	"	Pat. to B. Sayer.....									Waters of Reedy & Sandy.
2,500	"	Pat. to B. Sayer.....									Waters of Reedy Creek.

Given under my hand at the auditor's office, in city of Richmond, Va., this 22d day of February, 1869.

WM. F. TAYLOR, *Aud. P. Acc'ts.*

Also another certificate, signed by said Taylor as auditor as aforesaid of same date, in the words and figures following, to wit:

I, William F. Taylor, auditor of public accounts for the Commonwealth of Virginia, hereby certify that I have caused the records of my office to be carefully examined, and that I do not find upon the land-books of the commissioners of the revenue for the counties of Mason and Jackson, formerly in the Commonwealth of Virginia, now in the State of West Virginia, any lands assessed or charged thereon with taxes for the years 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827,
1828, 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1839,
86 & 1840, in the name of the following parties, or any one or more of them, or the heirs of any one or more of them, to wit, John

Ashley, John Barclay, Harriet Barclay, C. C. Biddle, Mary Biddle, Charlotte Barclay, James J. Barclay, J. B. Biddle, J. M. Barclay, George W. Biddle, Chapman Biddle, James Cochran, James Dundas, Benjamin Kugler, John Miller, jr., John Nixon, Henry Pratt, Robert Packer, Benjamin Tilghman, John Vaughan, Thomas Willing, of the following numbers of acres & descriptions, to wit:

1,500	acres	....	Gallatin	survey	....	No.	5	...	Waters	of	Mill Creek.
3,500	acres	.....	"	.....	"	.....	No.	6	.....	"	"	"
4,000	"	.....	"	.....	"	.....	No.	7	.....	"	"	"
1,000	"	.....	"	.....	"	.....	"	8	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	9	.....	"	"	"
1,555½	"	....	Gallatin	..	"	.....	"	6	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	5	.....	"	"	"
1,200	"	.....	"	.....	"	.....	"	7	.....	"	"	"
1,330	"	.....	"	.....	"	.....	"	8	.....	"	"	"
1,000	"	.....	"	.....	"	.....	"	9	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	10	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	13	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	14	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	15	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	17	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	20	.....	"	"	"
1,830	"	.....	"	.....	"	.....	"	22	.....	"	"	"
	1,500	"	Savary	..	"	.....	"	4	.....	"	"	"
87	1,700	acres	Savary's	survey	..	No.	5	.....	Waters	Mill	Creek.
	1,500	"	"	.....	"	.....	"	6	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	10	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	12	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	21	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	22	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	7	.....	"	"	"
1,500	"	.....	"	.....	"	.....	"	9	.....	"	"	"
1,000	"	.....	"	.....	"	.....	"	17	.....	"	"	"
750	"	...part of Sayer & Galls,					No.	10	.....	Ohio	River.	
3,350	"	..	"	..	"	..	"	.....	"	....	Near	"	"
4,000	"	...pat. & B. Sayer					.....		....	Waters of Reedy & Sandy.		
2,500	"	..	"	..	"	..	"	.....	"	....	Reedy Creek.		

Given under my hand at the auditor's office in the city of Richmond, Virginia, the 22d day of February, 1869.

WM. F. TAYLOR, *Aud. P. Acc'ts.*

Also the plat and report of Robert Park, surveyor appointed in this cause, in the words and figures following, to wit:

* By virtue of the annexed order of the district court of the United States for the western district of Virginia, held at Charleston, on the 25th day of April, 1859, I, Robert Park, surveyor therein appointed, did, on the 9th day of March, 1869, agreeable to the notice herewith filed, proceed to survey and lay off such portions of the land in controversy, claimed by Lot M. Morrill et al., plaintiffs, and James Armstrong et al., defendants, as either party might direct. We proceeded, under the direction of Granville Parker,
88 esq'r., counsel for def'd'ts, and in the presence of James Arm-

* See annexed plat to be entered here.

strong, to a white-oak stump at Figure 1, shewn to me as being a corner to Albert Gallatin's 17th survey, a copy of the patent of which is herewith filed and marked (A); also corner to John Allison's 6th survey, a copy of the plat and certificate of which is herewith filed and marked (B); from thence we ran with a line of said Allison's 5th survey, S. 41° 30′ W. 226 poles, to a white oak, corner to Henry O. Middleton's 625-acre survey, passing through Jonathan Hyres' unfinished stone house and improvement, same course continued 58 poles further, in all 284 poles, to a white oak at Figure 2, finding this line well marked with ancient marks; thence, with a line of Allison's 4th survey, S. 65° 30′ W. 220 poles. We then adjourned till March 10, 1869. Pursuant to adjournment met and continued our course 70 poles, in all 290 poles, to a stake at Figure 3, (old corner not found;) thence, by another call of Gallatin's patent reversed, N. 40° W. 18 poles, to a stake in a line of Allison's 2d survey at Figure 4; thence, by a line of Allison's 2d survey, N. 45° E. 56 poles, to a white-oak stump at Figure 5, shown to me as being corner to Allison's 2d survey; thence, with the reverse of the call of said Gallatin's patent, N. 62° W. 80 poles to said Middleton's
89 corner, a white oak; same course continued 284 poles, to Levi Castoe's field; same course cont'd 78 poles further, in all 406 poles, to a stake near a hickory, shown to me as the place where the corner to Allison's 1st and 2d surveys stood; same course cont'd 5 poles further to Bomrett's improvement, 139 poles through the same to Peter Cleek's improvement, and 90 poles through the same to John Starcher's improvement, in all 756 poles, to a stake in John Swan's line, and in John Starcher's field at Figure 6. We then adjourned until March 11th, 1869. Pursuant to adjournment, we met at the stake at Figure 6, in the Swan line, and ran with the same N. 75° E. (difference of variation allowed) 196 poles, to a white-oak stump, corner to James Armstrong's, small lot purchased of Middleton; thence, with said Swan's line, N. 75 E., in all 248 poles, to a beech stump, corner to said Armstrong's 420-acre survey, in the Swan line at Figure 7; thence, with the same and a line of said Armstrong's survey, N. 75° E., passing an old white-oak corner at 185 poles, course cont'd 106 poles further, in all 539 poles, to a fallen white oak and dogwood sprout at Figure 8, shown to me as being the original white-oak and dogwood corner to John Swan's survey of 2,000 acres, a copy of the patent of which is herewith filed and marked C.
90 We found the line of the Swan survey, from Figure 6 to Figure 8, marked with ancient marks; blocks Nos 1 & 2 were taken from this line, and are herewith filed; thence, by a line of Savary DeValconlon's 17th survey, a copy of the plat and certificate of which is herewith filed and marked (D), N. 27° E., crossing a branch and the main right-hand fork of Sycamore, and passing through Rockhold's improvement, shown to me as the place where William Parsons lived in 1829, at 228 poles; thence the same course cont'd, in all 314 poles, to the road; thence, leaving the line, N. 20° W. 40 poles & N. 70° W. 20 poles, to the house of John F. Parsons at Figure 9, in Savary's 17th survey. We then went back on the line and continued the course N. 27° E. 162 poles further, in all 476 poles, to a white oak at Figure 10, missing the same 13 poles to the left, corrected course from Figure 8 to Figure 10, N. 28° 30′ E.;) said white oak is marked with very ancient marks on two sides. We then proceeded to locate the former residence of Travis Parsons, and found the same to bear N. 15° E. 98 poles from the house of John F. Parsons, and stands at Figure 11. We then adjourned till Friday, 12th March, 1869. Pursuant to adjournment we met at an ash at Figure 12, inside of Gallatin's 17th survey, shewn to me as being a corner to a survey of 40 acres patented

to Jacob Starcher, on the 2d day of August, 1819, a copy of which
91 patent is herewith filed and marked E; thence, by the reverse of a call of said patent, N. 59° E. 56 poles, to a stake in Swan's line, N. 74° W. 16 poles from James Armstrong's white-oak corner, to his purchase of a small lot from H. C. Middleton. We then adjourned till Saturday, March 13th, 1869. Pursuant to adjournment, we met at Figure 6, in the Swan line; thence we ran with the Swan line S. 74 W. 208 poles, crossing Mill Creek; finding this line well marked with ancient marks we then went back to the corner of Gallatin's 7th survey at Figure 6, (old corner down;) thence, with the reverse of the call of said Gallatin's 7th survey, (a copy of the plat and certificate of which is herewith filed and marked F,) S. 45° W. 184 poles, crossing Mill Creek, and from this point we proceeded to run a connection line to Gilbert Pringle's house, to ascertain in what survey his residence lay, which house is said to stand on the lease taken by John Pringle from Watson, and found said Pringle's house to stand in Gallatin's 8th survey, at Figure 13; a copy of the plat and certificate of said Gallatin's 8th survey is herewith filed and marked (G). We then went to the house of Wm. Thomas, said to stand on the Adam Parson's lease, and ran from thence to the place where a sassafras & beech formerly stood, corner to John Allison, to ascertain what survey the Adam Parson lease was in, and found it to be in Savary's 6 survey, at Figure 14, a copy of the plat
92 and certificate of which is herewith filed and marked H. We then adjourned until Monday, March 15th, 1869, to meet at a poplar at A. March 15th, 1869. Pursuant to adjournment we met at a poplar stump at A, in a branch of the Grass Lick Fork of Mill Creek, shown to me as being a corner to Samuel Hollingsworth's survey of 53,000 acres, a copy of the plat and certificate of which is herewith filed marked I, and also a corner to Samuel M. Hopkin's survey of 200,000 acres, (a copy of the patent of which is herewith filed and marked J;) thence with the last call of said patent S. 9° E., (variation deducted,) S. 8° E., crossing said run and a branch of 18-mile Creek and small branches of Pocatalico, missing a beech stump at B, fourteen poles to the left, (corrected course from A to B, S. 7° E. 480 poles;) said beech stump stands on a left-hand branch of the Trace Fork of Pocatalico Creek, and is marked as a corner and has a very ancient letter S and part of an H marked on one side; the other side is burnt out; said beech was shown to me by R. R. Riley as the beginning corner to said Hopkin's survey; thence by the first call of said patent, (variation deducted,) N. 43° W., crossing branches of 18-mile Creek, and finding this line well marked, took blocks the growths of which counted 73 years; blocks Nos. 1, 2, 3, & 4 were taken from
93 this line, and are herewith filed, our course crossing branches of the Parchment Fork of Mill Creek, 1,100 poles; and adjourned till Tuesday, March 16th, 1869. Pursuant to adjournment we met and cont'd our course N. 43° W. 1,840 poles further, crossing several branches of 13-mile Creek; and adjourned until Wednesday, March 17th, 1869. Pursuant to adjournment we met and cont'd our course N. 43° W., crossing several branches of 13-mile Creek and Cow Run of Mill Creek, 1,596 poles further, in all from B to C 4,536 poles, to a sugar-tree stump at C, on a branch of Cow Run that runs a N. E. course; said sugar tree has been broken off about 9 feet from the ground, and has sprouted from the top, and is marked as a corner, and has the letters S M H cut on the bark, and looks very ancient; the line B C is well marked with ancient marks; blocks Nos. 5, 6, & 7 were also taken from this line and are herewith filed; thence, by the second call of the said Hopkin's patent, N. 2° 30′ E. (dif. v'n added) 682 poles, crossing several

branches of Cow Run, to a poplar at D, standing at the water's edge, well marked on two sides as a corner and has the letters S M H cut in the bark, of very ancient appearance; the line C D is well marked; blocks Nos. 8, 9, & 10 were taken from this line; thence, with the third call of the said Hopkin's patent, N. 47° 30′ E. (dif. v'n added) 860 poles, crossing another branch of Cow Run and Bar Run and Big Mill
94 Creek, to a small white oak and gum at E, about 80 poles above the rapids; the gum was marked with ancient marks, from which we took three blocks; one of which is herewith filed and marked. The white oak was also marked as a corner and had been blocked many years since; both trees have been girdled 3 or 4 years; the line E D is also well marked with ancient marks; blocks Nos. 11, 12, & 13 were taken from this line. We then adjourned till Friday, March 19th, 1869. Pursuant to adjournment we met and ran by the 4th call of the said Hopkin's patent N. 14° W. (dif. of variation deducted) 109 poles, crossing Mill Creek twice, to a stake near a small hickory, corner to Gilpin at F, on the bank of the creek, (old corner down;) thence down the creek, with the meanders thereof and binding thereon, 698 poles, to the mouth of Lick Run. We then adjourned until Monday morning, March 22d, 1869. Pursuant to adjournment we met at the mouth of Lick Run and continued down the creek 552 poles, in all from the stake at F to the mouth of the creek 1,250 poles, to the Ohio River. We then adjourned till Tuesday, March 23d, 1869. Pursuant to adjournment we met at the white oak and gum at E, and proceeded to run a connection line to the N.-west corner of the John Swan survey, and ran by seven
95 courses 1,692 poles to a fallen white oak shewn to me by Elijah King as Swan's corner; thence, with one of said Swan's lines, N. 75° E.; finding this line well marked with ancient marks, took blocks, one of which is herewith filed, and marked Swan No. 3. We continued this line until we could see that it would cross Mill Creek twice. We then adjourned the survey, having completed our work according to the written instructions from Granville Parker, esq'r. All of which is respectfully submitted.

ROBERT PARK,
Surveyor Dist. Court of the U. S. for W. V.

ISAIAH PRICKET,
M. V. B. PARK, *Sworn Chainmen.*
TAPLEY GAINES,
ELISHA STEWART,
STEWART, *Axemen.*

(Here follows map marked page 95.)

The expenses of the above work are as follows:

1869.		
March 24th.	To 15 days spent about the surveying for def'ts, @ $6 per day	90 00
April 17.	To 15 days spent by self and assistant in making out reports for def'd'ts, @ $6 p'r day	90 00
" "	To expenses for chainmen, axemen, packer, boarding, and conveyance	93 45
		$273 45

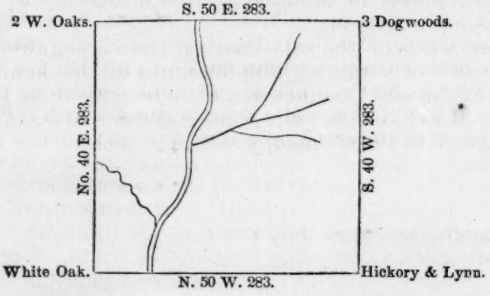
ROBERT PARK, *Surveyor, &c.*

(The orders of the court, under which the foregoing report and plat of survey were made, and referred to in said report, are herein-
96 before copied, as made and entered on the 23d day of September, 1857, and 25th day of April, 1859, respectively; which see.)

Exhibit A, referred to in the foregoing report of Surveyor Park, is the same patent to Albert Gallatin for his 17th survey of 1,500 acres, which is hereinbefore copied, commencing on page 23 of this record.

Exhibit B, in said report, being a copy of the certificate and plat of John Allison's 6th survey, is in the following words and figures, to wit:

No. 6.



JULY 24, 1784.—Surveyed for John Allison, gentl'n, 500 acres of land in Monongalia County, on a land office treasury warrant (No. 8677) dated 9th November, 1781, entered August 9th, 1782, on both sides of Mill Creek, adjoining and above his 5th entry, and bounded as followeth; Beginning at a white oak; thence N. 40 E. 283, crossing a run, to 2 white oaks; S. 50 E. 283 poles, crossing creek, to three dogwoods; S. 40 W. 283 poles, to a hickory & lynn; N. 50 W. 283 poles, crossing the creek aforesaid, to the beginning; plotted by a scale of 200 poles to the inch; no variation.

DAVID GRAY,
97 *Ass't to Sam'l Hanway, S. M. C.*

FRANCIS,
ASA KILLIAM, *S. C. B.*

RICHMOND, *January 8th*, 1869.

I certify that the foregoing plat & certificate of survey is a true copy of the original on file in the Va. land office.

[L. OFFICE SEAL.] H. R. SUTTON,
Reg. Va. Land Office.

Exhibit "C," in said report, being a copy of patent to John Swan for 2,000 acres of land, is in the following words and figures, to wit:

Patrick Henry, esquire, governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye that by virtue & in consideration of a military warrant under the King of Great Britain's proclamation of seventeen hundred and sixty-three, No. 907, & issued the 7th day of April, one thousand seven hundred & eighty, there is granted by the said Commonwealth unto John Swan a certain tract or parcel of land, containing two thousand acres by survey, bearing date the 21st day of July, one thousand seven hundred and eighty-four, lying & being in the county of Monongalia, on both sides of Mill

Creek, adjoining & above lands entered for Robert Rutherford, esquire, & bounded as followeth, to wit: Beginning at a white oak and beech, corner to said Rutherford; thence north seventy-four degrees east one
98 thousand & forty poles, crossing said creek twice & a run once, to a hickory and dogwood; south sixteen degrees east three hundred and thirty-three poles, to a white oak and dogwood; south seventy-four degrees west eight hundred & ninety-five poles, crossing the creek aforesaid, to a white oak & maple, corner to the aforesaid Rutherford; thence, by his lands, north forty degrees west three hundred and forty poles, to the beginning, with its appurtenances; to have & to hold the said tract or parcel of land, with its appurtenances, to the said John Swan & his heirs forever.

In witness whereof the said Patrick Henry, esquire, governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the 28th day of March, in the year of our Lord one thousand seven hundred & eighty-six, & of the Commonwealth the tenth.

P. HENRY.

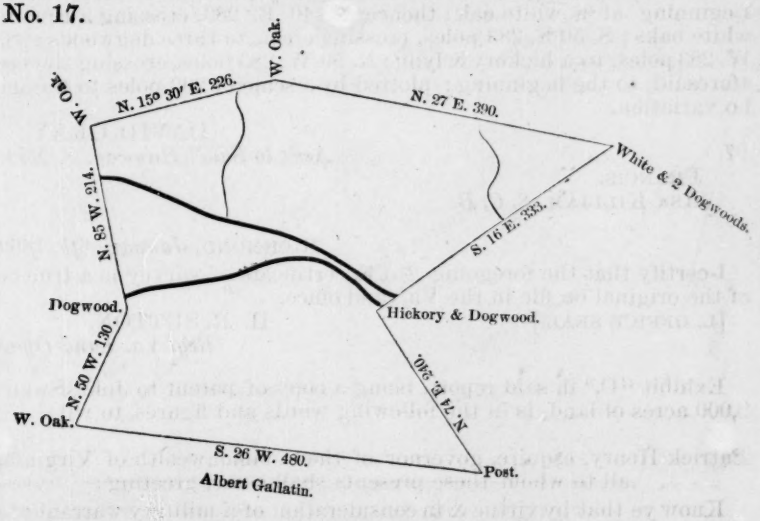
RICHMOND, *February 3d*, 1869.

The foregoing is a true copy from the records of the Va. land office.

[L. OFFICE SEAL.] H. R. SUTTON,
Reg. Va. Land Office.

Exhibit "D" in said report, being a copy of plat and certificate of Savary DeValconlon's 17th survey for 1,000 acres of land, is in the
99 words and figures following, to wit:

No. 17.



AUGUST 26TH, 1784.—Surveyed for Savary DeVanconlon, ass'ee of Samuel Hanway, ass'ee of Albert Gallatin, ass'ee of Stephen Lacoste, 1,000 acres of land, Monongalia County, in part land office treasury warrant No. 17514, dated 27th June, 1783; entered 13th July, 1784, adjoining Albert Gallatin's 27th entry, extending towards Mill Creek, and bounded

as followeth, viz: Beginning at a white oak, corner to Albert Gallatin's 24th survey, and then, by lands of said Gallatin, N. 85 W. 214 poles, crossing two runs, to a dogwood; N. 50 W. 130 poles, to a white oak; S. 26 W. 480 poles, to a post; thence, by lands of John Swan, N. 74 E. 240 poles, to a hickory and dogwood; & S. 16 E. 333 poles, crossing the 1st left-hand fork of Mill Creek, to a white oak and dogwood; and thence
N. 27 E. 390 poles, to a white oak; and N. 15° 30′ E. 226 poles,
100 crossing a run, to the beginning; plotted on a scale of 200 poles to the inch—no variation.

WILLIAM AUG'T'S SMITH,
Ass't to Samuel Hanway, S. M. C.

ASA KELLEM,
JEREMIAH YORK, *S. C. C.*

RICHMOND, *January 7th*, 1869.

I certify that the foregoing plat & certificate of survey is a true copy of the original on file in the Va. land office.

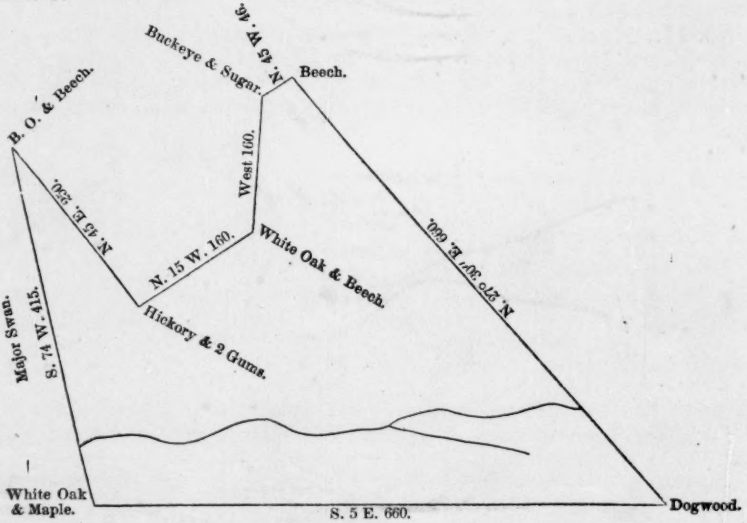
[L. OFFICE SEAL.]

H. K. SUTTON,
Reg. Va. Land Office.

Exhibit "E," in said report, is a copy of a patent to Jacob Starcher for 40 acres of land, the original of which was given in evidence by the defendants, and is hereinafter copied.

Exhibit "F," in said report, is in the words and figures following, to wit:

No. 7.



Savary DeValconlon.

SEPTEMBER THE 3RD, 1784.—Surveyed for Albert Gallatin, ass'ee of Honore Giraud, 1,200 acres of land in Monongalia County, on a land
101 office treasury warrant No. 15620, dated the 8th of May, 1783; entered the 7th of May, 1784, adjoining Savary DeVanconlon's

29th entry, & extending along lands of John Allison, & bounded as followeth, viz: Beginning at a white oak & maple, corner to said Savary DeValconlon's 5th survey; & thence, with a line of said survey, S. 5 E. 660 poles, to a dogwood; N. 27° 30′ E. 660 poles, to a beech; then, by lands of John Allison, N. 45° W. 46 poles, to a sugar tree & buckeye; west 160 poles to a white oak and beech; N. 45 W. 160 poles, to a hickory & two gums; N. 45 E. 250 poles, crossing Mill Creek, to a black oak and beech, corner to said Allison, & to John Swan; & then, by lands of said Swan, S. 74° W. 415 poles, crossing Mill Creek and a run, to the beginning. Scale 200 poles to the inch. No variation.

WM. AUGUSTUS SMITH,
Ass't to Sam'l Hanway, S. M. C.

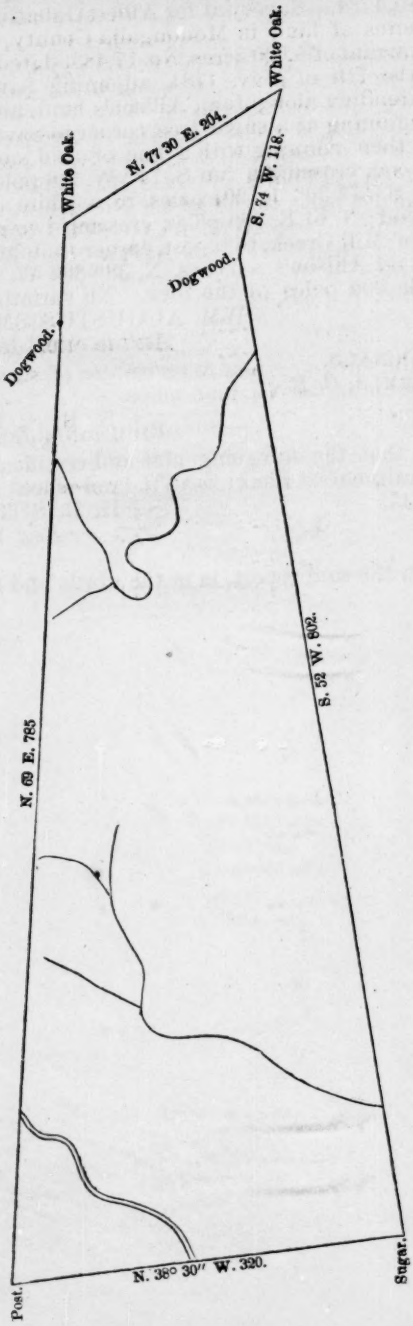
WM. MCDONALD,
JEREMIAH YORK, *S. C. B.*

RICHMOND, *January 5th*, 1869.

I certify that the foregoing plat & certificate of survey is a true copy of the original on file in the Va. land office.

[L. OFFICE SEAL.] H. R. SUTTON,
Reg. Va. Land Office.

Exhibit "G," in the said report, is in the words and figures following, to wit:


White Oak.
White Oak.
N. 77 30 E. 204.
S. 74 W. 118.
Dogwood.
Dogwood.
N. 69 E. 785
S. 52 W. 802.
Post.
N. 38° 30" W. 320.
Sugar.

102 No. 8.

SEPTEMBER 3D, 1784.—Surveyed for Albert Gallatin, ass'ee of Stephen Lacoste, 1,330 acres of land in Monongalia County, in part of a land office treasury warrant of 5,000 acres, No. 17,483, dated the 27th of June, 1783; entered the 7th of May, 1784, adjoining Savary DeValconlon 30th entry, & extending along John Allison's land, and bounded as followeth, viz: Beginning at a sugar tree, corner to Savary DeValconlon's 6th survey, & then running with a line of said survey S. 52 W. 802 poles, to a dogwood, crossing a run S. 74° W. 118 poles, crossing a run, to a white oak; S. 17° 30″ E. 204 poles, to a white oak; N. 75° E. 80 poles, to a dogwood; N. 61 E. 785 poles, crossing two runs and the main right-hand fork of Mill Creek, to a post, corner to John Allison; & then, with a line of said Allison's surveys, N. 38° 30″ W. 320 poles, to the beginning. Scale 200 poles to the inch. No variation.

WM. AUGUSTUS SMITH,
Ass't to Sam'l Hanway, S. M. C.

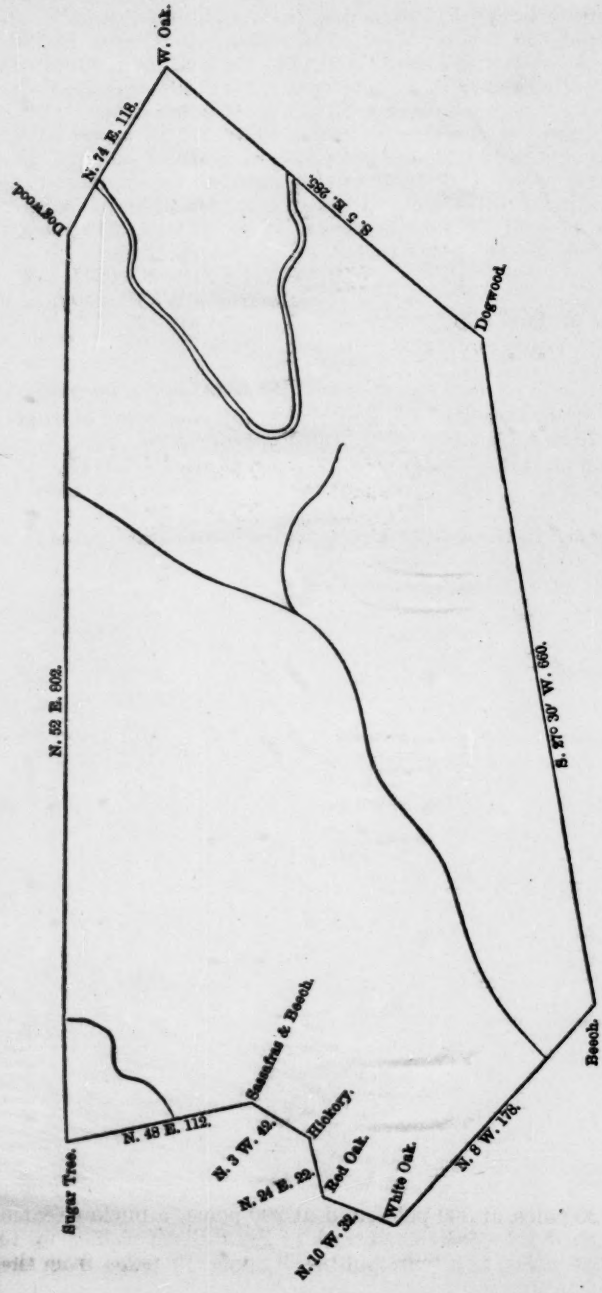
WILLIAM MCDONALD,
JEREMIAH YORK, *S. C. B.*

103 RICHMOND, *January 5th*, 1869.

I certify that the foregoing plat and certificate of survey is a true copy of the original on file in the Va. land office.

[L. OFFICE SEAL.] H. R. SUTTON,
Reg. Va. Land Office.

Exhibit "H," in the said report, is in the words and figures following, to wit:

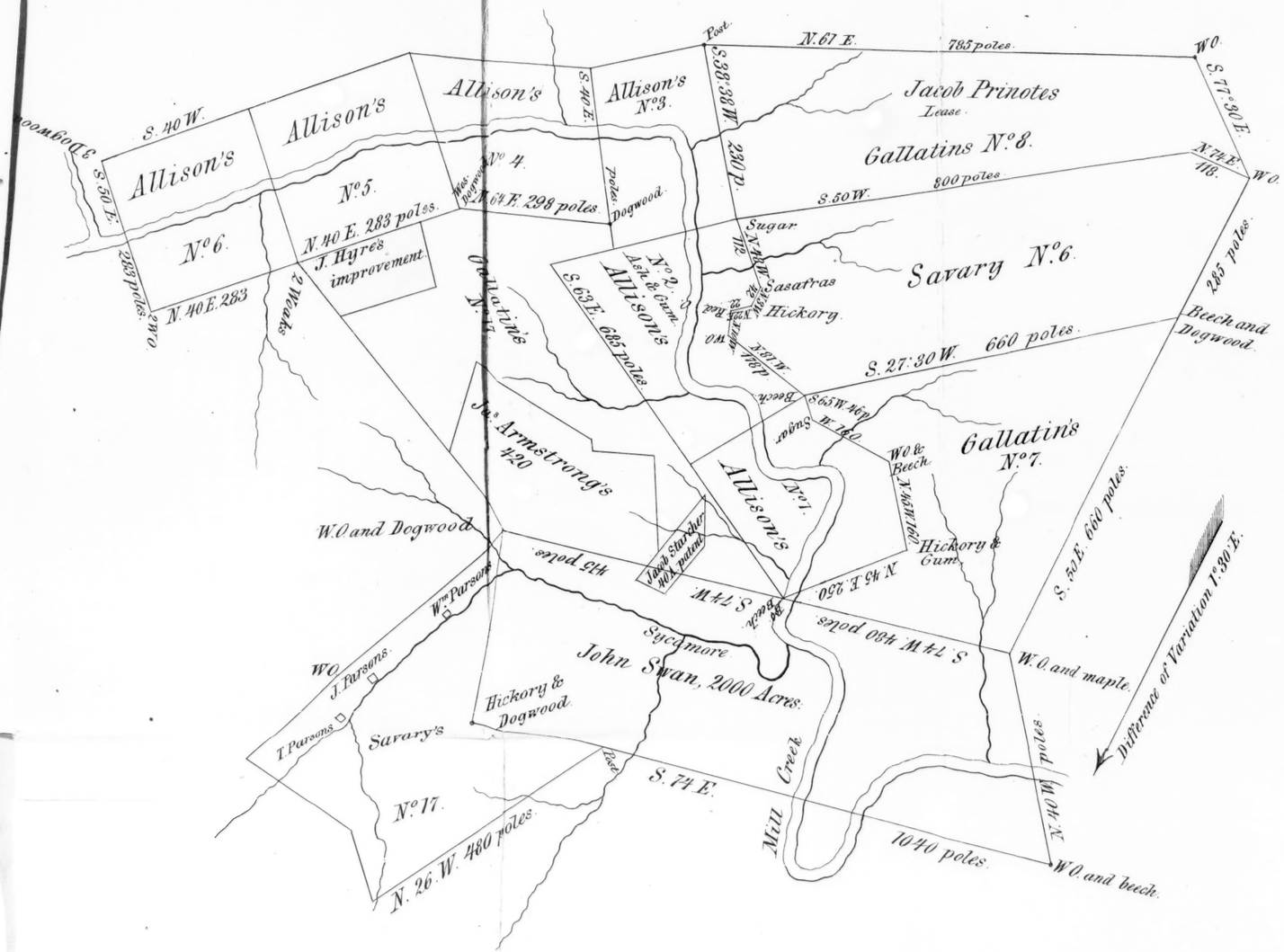

W. Oak.
N. 74 E. 118.
Dogwood.
E. 5 E. 196.
Dogwood.
N. 52 E. 602.
S. 27½ W. 660.
Beech.
Sassafras & Beech.
Hickory.
N. 43 E. 112.
N. 3 W. 42.
N. 24 E. 22.
Red Oak.
White Oak.
N. 8 W. 178.
Sugar Tree.
N. 10 W. 32.

No. 6.

III.

N.° 280. Armstrong vs. Morrill.

Page III.



This diagram consisting of Albert Gallatins, 17.th, 8.th & 7.th Surveys. Savary de Valcoulon, 17.th & 6.th Surveys. John Allisons, 1.st, 2.nd, 3.rd, 4.th, 5.th and 6.th Surveys. John Swanns, 2000 Acres Survey. James Armstrongs, 420 Acres Survey. Jacob Starchers 40 Acres Survey. Jonathan Hyre's improvement without metes and bounds, was made at the instance of Hon. C.D Camden Counsel for pltff's. – Charles and Jesse Corney's Survey of 469 Acres lays in Gallatins 7.th Survey, and cannot be laid down without an actual Survey, as will be seen by a copy of a deed, from Henry and Moriah Nixon to said Corney's which copies are herewith filed marked A for pltff's. – All of which is respectfully submitted.

Scale: 200 poles to inch.

Robert Park, Survey or District Court of U.S. for W.V.a –

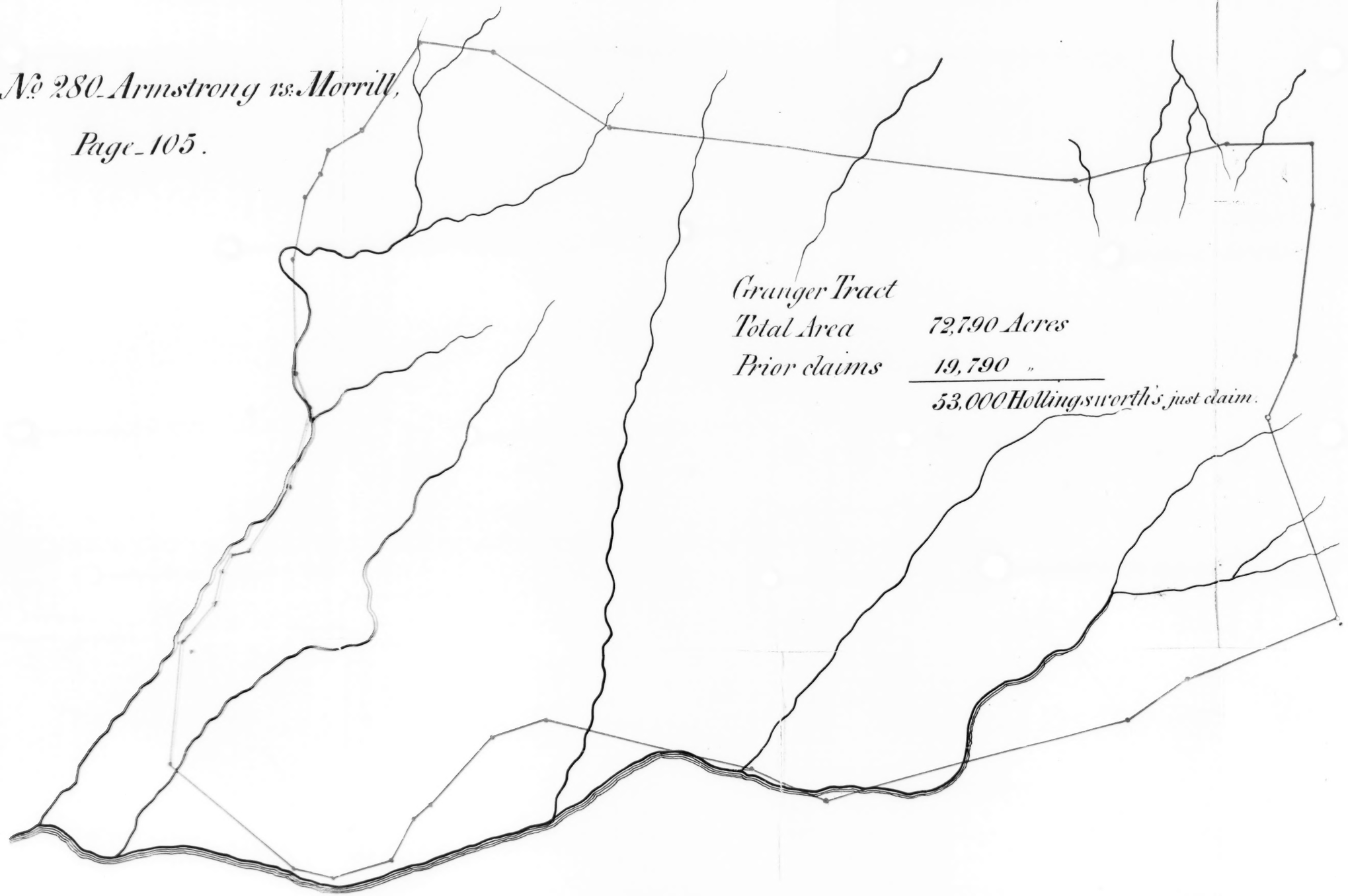
1869: The expenses of the above work were as follows:

April 17.th to making out the above diagram of 16 Surveys $ 10.
8 Copies at $5 each 40
$ 50.00

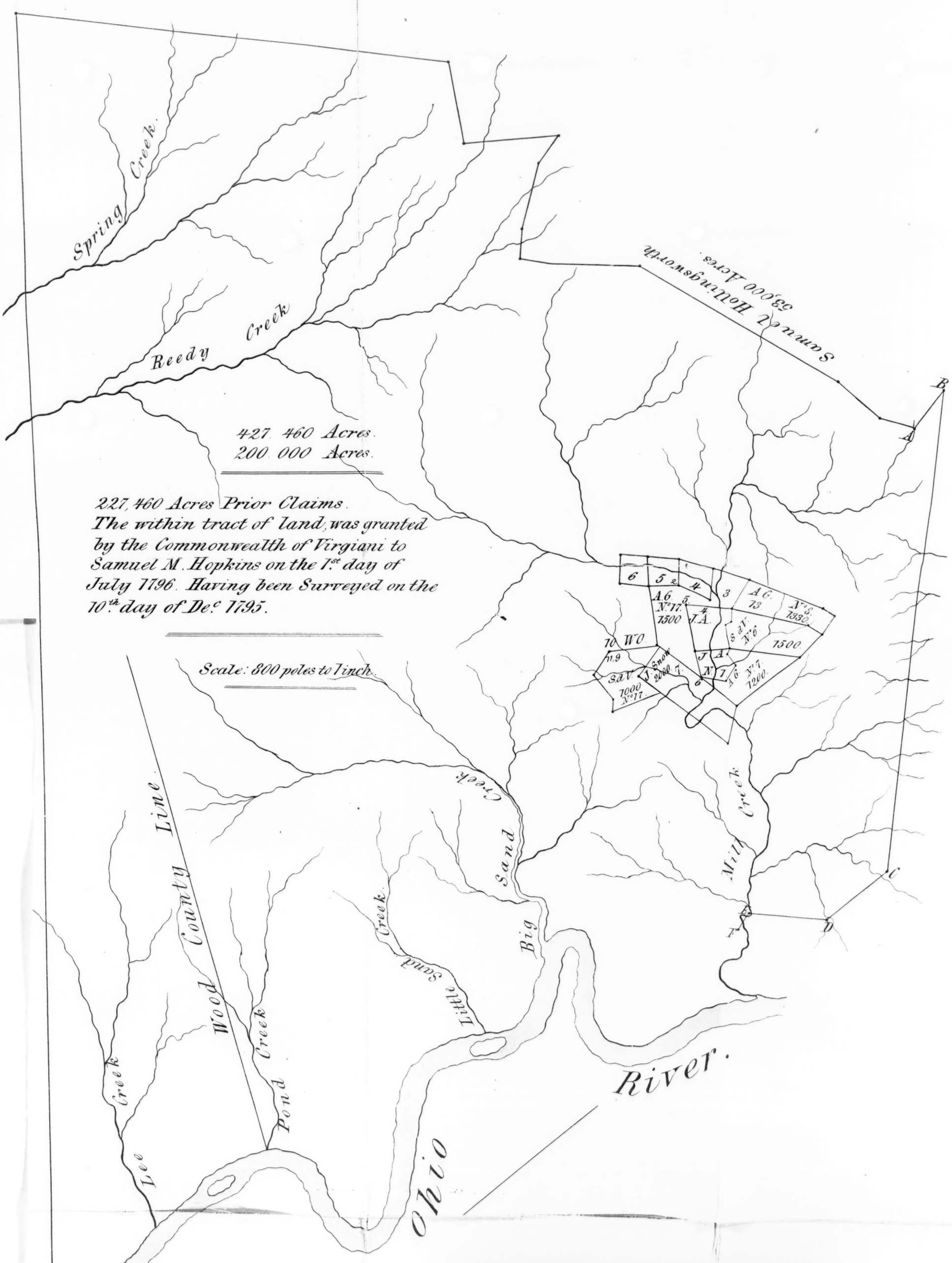
Robt. Park surveyr.

No 280 Armstrong vs Morrill,

Page 105.



N.° 280.. Armstrong & al vs. Morrill.
Page 95.



SEPTEMBER 3D, 1784.—Surveyed for Savary DeValconlon, as Albert Gallatin, ass'ee of Stephen Lacoste, 1,500 acres of land in Monongalia County, in part of a land office treasury warrant of 3,000 acres, No. 17502, dated the 27th of June, 1783; entered the 7th of May, 1784, adjoining Albert Gallatin 32d entry, and extending along John Allison's lands, and bounded as followeth, viz: Beginning at a beech, corner to said Gallatin's 7th survey, and then with a line of said survey S. 27° 30′ W. 660 poles, to a dogwood; S. 5 E. 285 poles, crossing the second right-hand fork of Mill Creek, to a white oak; N. 74 E. 138
104 poles, crossing said fork, to a dogwood; N. 52 E. 802 poles, crossing a run, to a sugar tree, corner to John Allison; and then, by lands of said Allison, N. 48 W. 112 poles, crossing a run, to a sassafras and beech; N. 3 W. 2 poles, to a hickory; N. 24 E. 22 poles, to a red oak; N. 10, W. 2 poles, to a white oak; N. 81 W. 178 poles, crossing a run, to the beginning. Scale 200 po. to the inch. No variation.

WILLIAM AUG'T'S SMITH,
Ass't to Samuel Hanway, S. M. C.

WILLIAM MCDONALE,
JEREMIAH YORK, *S. C. C.*

RICHMOND, *January* 7, 1869.

I certify that the foregoing plat & certificate of survey is a true copy of the original on file in the Va. land office.

[L. OFFICE SEAL.]

H. R. SUTTON,
Reg. Va. Land Office.

Exhibit "I," in the said report, is in the words and figures following, to wit:

(Here follows map, page 105.)

107 Surveyed for Samuel Hollingsworth 53,000 acres of land in Kanawha County, by virtue of three land office treasury warrants for 20,000 acres each, No. 579 & 580, & 13,000 acres of No. 589, all dated the 25th July, 1794, ass'ee of George Edley, who was ass'ee of Wilson C. Nichols, which survey is exclusive of the following prior claims, which are contained within the bounds of the annexed plan, and are as follows, viz: 1,165 acres on a N. W. branch of Pocatalico, surveyed the 10th November, 178–, for Henry Banks; also 1,040 acres, joining a survey of said Banks of 5,398 acres, which is also on said N. W. branch of Pocatalico, surveyed the 7th and 9th of Dec'r, 1784; also 808 acres on the same branch of Pocatalico, for said Banks, surveyed the 29th November, 1784, & 642 acres joining the same, surveyed for said Banks the 11th Dec'r, 1784; also for said Banks, 7,923 acres on said N. W. branch of Pocatalico, three or 4 miles above his other surveys, & was surveyed the 14th Dec'r, 1784, and 2,814 for other prior claims, not here inserted, amounting in all of prior claims, to 19,790 acres, which, added to 53,000, amount to 72,190 acres, which is contained within the bounds of this surv'y, and is bounded as follows, viz: Beginning about one mile above the main forks of Pocatalico, and on the south fork thereof, at a black oak on the north side of the creek, and about 20 poles therefrom, being corner to a survey of 300 acres, surveyed for William Ward, and running thence N. 45 W. 520 poles, crossing waters, as shown in the plan,
108 at 20 poles, at 300 poles, and at 200 poles, a buckeye & sugar tree on the bank of the north fork of Pocatalico; thence up the same N. 4° E. 220 poles, to a lynn and beech about 10 poles from the creek;

N. 35 W. 150 poles, to a lynn and beech on the bank of the creek, crossing waters at 20 poles; N. 10° W. 70 poles, to a sugar tree on the bank of the creek; N. 4° E. 60 poles, to two Spanish oaks; N. 12 W. 340 poles, crossing waters at 20 poles, at 100 poles, at 180 poles, and at 40 poles, to a white oak on the point of a ridge; N. 30 W. 330 poles, to a hickory and sugar tree, crossing waters at 160 poles & 170 poles, the said hickory & sugar tree N. 68 W. 130 poles to a buckeye and sugar tree on the bank of the creek, crossing waters at 60 poles; N 45 W. 470 poles, to a sugar tree and lynn on the bank of the creek, crossing the same eight times; N. 30 W. 280 poles, crossing the creek, to two buckeyes on the hill side, on the west side of the creek; N. 2 W. 100 poles, to a hickory and lynn, about 4 poles from a buffalo lick; thence N. 28 W. 120 poles, to a hickory at the forks of the creek; N. 20 E. 160 poles, to a beech by a branch; N. 9 W. 460 poles, to a poplar and maple on a head branch of Mill Creek, crossing waters at 260 poles; N. 55 E. 320 poles, crossing a branch at a large poplar on the west side of a hill, crossing a small branch; N. 80 E. 590 poles, to a lynn & sugar tree on the bank of a small branch running into the Little Kanawha, crossing
109 waters at 100 poles & 240 poles; N. 45 E. 1,980 poles, nearly on the dividing ridge between Pocatalico and Little Kanawha, crossing the heads of small branches, to a sugar tree and beech, on a large branch running out of the survey; N. 35 E. 660 poles, to a white oak and poplar, on the west side of a hill, crossing waters at 80 poles, at 60 poles, at 180 poles, & at 200 poles; N. 45 E. 360 poles, to a large poplar and chestnut oak, crossing waters at 100 poles; thence S. 45 E. 260 poles, to a beech by a branch, crossing waters at 100 poles; thence S. 35 E. 630 poles, to a beech and lynn in the forks of a creek, crossing waters at 240 poles, at 160 poles; thence S. 15 E. 290 poles, to a beech by a branch of the south fork of Pocatalico; S. 60 E. 890 poles, to a red oak on top of a ridge crossing waters at 140 poles, at 200 poles, at 206 poles, and at 160 poles; thence S. 30. W. 720 poles, to a white oak on the top of a ridge, crossing waters at 60 poles, at 120 poles, at 240 poles, and at 200 poles; thence S. 50 W. 300 poles, to a white oak on the south side of a hill; S. 27 W. 1,340 poles, to a large white oak on the S. side of a hill, crossing waters at 20 poles, at 220 poles, at 180 poles, and at 180 poles, at 280 poles, and at 80 poles, the said white oak; thence S. 70 W. 360 poles, crossing the creek twice, to a sugar tree and beech on the bank of the south fork of Pocatalico; thence S. 60 W. 930 poles, to a red oak by a branch, crossing waters at 100 poles, at 80 poles,
110 at 120 poles, at 100 poles, at 40 poles, at 60 poles, at 100 poles; thence S. 35 W. 240 poles, to a beech by a branch running out of the survey; thence S. 400 poles, to a white oak by a branch, crossing a branch at 120 poles; thence S. 9 W. 80 poles, to a white oak on a hill; S. 15 E. 200 poles, to a beech on the bank of a creek; thence S. 30 W. 270 poles, to a white oak on the top of a hill, crossing waters at 120 poles; thence S. 50 W. 160 poles, to a hickory on the bank of the creek; S. 87 W. 710 poles, to the beginning. 15th Dec'r, 1794.

WM. McCRERY, *Ass't*,
REUBEN SLAUGHTER, *S. K. C.*

ANDREW HATFIELD,
ANDREW JOHNSON, *Chainmen.*
THOMAS UPTON, *Marker.*

Copy from record book No. 1, Kanawha County, page 55.
Teste: JOHN L. COLE,
Deputy for John S. Cunningham, S. K. C.

Exhibit "J," in said report, is a copy of patent to Samuel M. Hopkins, for 200,000 acres of land, another copy of which was offered in evidence by the defendants, and is hereinafter copied, commencing on page 117 of this record. (See margin.)

To Exhibit "J" aforesaid are attached the following certificates: "Wood County court, August term, 1827. The foregoing patent from Robert Brooke, esqr., governor of the Commonwealth of Virginia, under the lesser seal of said Commonwealth, to Samuel M. Hopkins, was presented in open court, and, on the motion of James T. Watson, ordered to be recorded.

"Teste: J. H. NEALE, *Clk.*

"A true copy from the records of Wood County.

"Teste: WILL. HATCHER, *D. C. W. C. C.*"

The plaintiffs also gave in evidence another plat and report, made by the same surveyor on a larger scale, at the instance of Hon. G. D. Camden, counsel of plaintiffs, in the words and figures following, to wit:

(Here follows map, page 111.)

113 *Bill of exceptions continued.*

The plaintiffs further offered evidence tending to prove that the parties grantors in the deed heretofore recited of John M. Barclay & others to Dundas & Kugler, dated on the 17th day of June, 1845, were the only heirs at law of John Barclay, one of the grantees in the before-recited deed of Robert Morris & others to said John Barclay & others, dated March 5th, 1795, and that John Nixon, one of the grantees in said last-mentioned deed, died in 1808. The said plaintiffs also offered evidence tending to prove that lot No. 17 of Gallatin, as laid down on both plats, and marked and designated on the certificates of Auditor Taylor before recited, is the land in controversy, and that the defendants were in possession thereof, or claimed title thereto, at the commencement of this suit. The plaintiffs also gave evidence tending to prove that the land in controversy, from the year 1804, the date of the formation of Mason County, lay in that county until the year 1831, the date of the formation of Jackson County, and from that time lay in the last-named county.

The defendants on their part offered in evidence the plat and certificate of a survey made for Samuel M. Hopkins for 200,000 acres of land in the county of Kanawha, dated 10th day of December, 1795, in the words and figures following, to wit:

Surveyed for Samuel M. Hopkins two hundred thousand acres of land, in the county of Kanawha, by virtue of two land
114 office treasury warrants for one hundred thousand acres each, Nos. 1622 and 1623, dated the 6th October, 1795, and is bounded and described as follows, viz: Beginning at a beech tree on the bank of a left-hand fork of Pocatalica, which runs there nearly S. 20 W., the same being corner to a survey of 53,000 acres made for Samuel Hollingsworth, and thence runing N. 45 W. 4,490 poles, to a sugar 8 inches in diameter, on bank of a rivulet, running N. E., crossing the head branches of Mill Creek and 18-mile Creek, as marked in the plan; thence north, crossing waters of Mill Creek, 674 poles, to a poplar 18 inches in diameter, marked S. M. H., standing on the north side of a branch of Mill Creek, running northeasterly close to the water; thence

N. 45 E. 840 poles, crossing several branches, also crossing Mill Creek to a black oak 9 inches in diameter, two small white oaks and a gum on the east of the creek about 80 poles above the rapids, the black oak marked S. M. H.; thence N. 16 W. 109 poles, crossing the creek twice to a Spanish oak three feet in diameter, on the bank of the creek below the rapids, marked on two sides as a corner, and also marked S. M. H. with a hatchet; the creek by the meanders thereof, and binding thereon, 1,179 poles, to the mouth of the creek on the upper side; thence, up the river Ohio by the different meanders thereof, and binding
115 thereon, crossing several creeks, as marked in the plat, 10,126 poles, to an elm four feet in diameter, two sugar trees, and a beech, on the bank of the Ohio River, corner to the counties of Kanawha and Harrison; thence, with the division line between said counties, S 55° E., crossing waters of Lee Creek and Little Kanawha, as specified in the plat, 11,313 poles, to pointers; thence S. 45° W. 3,945 poles, to two beech trees, by a branch of Little Kanawha, corner to a survey made for Thomas Matthews, of 2,000 acres, and with his line up said branch N. 60 W. 362 poles, to a white oak, corner to said survey, and also corner to a survey of 3,098 acres made for Charles Patterson, and continuing the same course with said Patterson's line 546 poles, to two sugar trees growing from one root, about 20 poles from a branch of Little Kanawha, crossing a branch of the same at 320 poles; thence S. 30° W. 910 poles, to a beech in the forks of the left-hand fork of the south fork of Pocatalico, about a half a mile up said fork, being corner to said Patterson's survey, and also corner to a survey of 53,000 acres made for Samuel Hollingsworth; thence, with nine of his lines crossing waters, as marked in the plat, N. 15° W. 290 poles, to a beech and lynn in the forks of a creek; N. 35° W. 630 poles, to a beech by a branch; N. 45° W. 260 poles, to a large poplar and chestnut oak; S. 45 W. 360 poles, to a white oak and poplar on the west side of a hill;
116 S. 35 W. 660 poles, to a sugar tree and beech and large branch northwestwardly; S. 45 W. 1,980 poles, to a lynn and sugar tree on the bank of a small branch; S. 80 W. 590 poles, to a large poplar; S. 35 W. 320 poles, to a poplar and maple on a head branch of Mill Creek; S. 9° E. 460 poles, to the beginning. An allowance of 227,460 acres is made in the calculation of area of this plat for prior claims contained within boundary thereof.

December 10th, 1795.

ANSELM TUPPER,
Ass't to Reub'n Slaughter, S. K. C.

ANDREW MCCLURG,
SOLOMON MCCULLOCK, *Sworn chainmen.*
JOHN HINCHMAN, *Marker.*

Variation 2 east.

Copied from record book 1st, pages 152, 153, and 154.
A. P. SINNETT, *S. K. C.*

The following is the plat of the above survey:

(Here follows map marked page 116.)

117 Also the patent issued on said survey to said Hopkins, by Robert Brooke, governor, dated the 1st day of July, 1796, in the words and figures following, to wit:

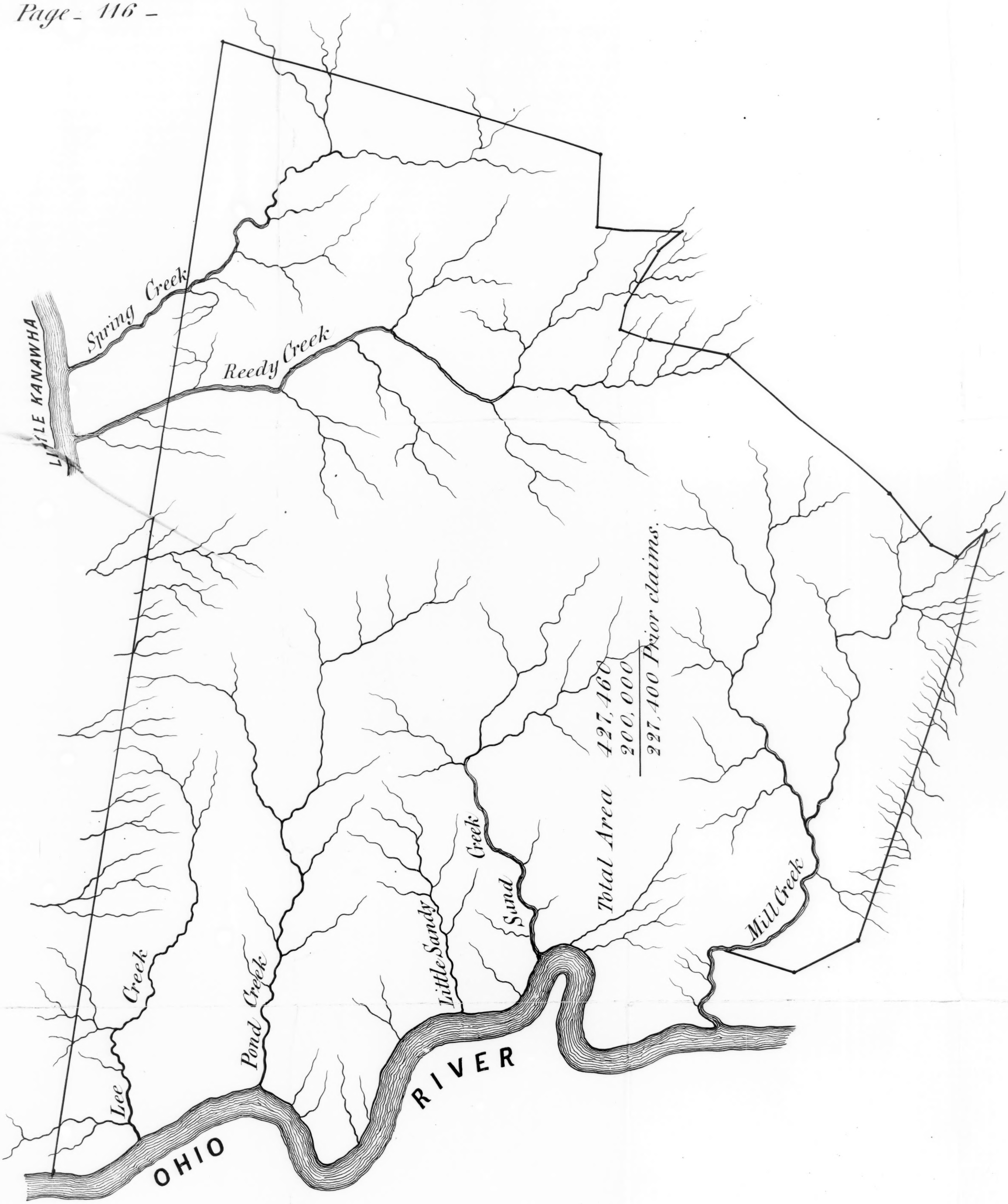
Patent to S. M. Hopkins for 200,000 *acres.*

Robert Brooke, esquire, governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye that by virtue of two land office treasury warrants, numbers sixteen hundred and twenty-two and sixteen hundred and twenty three, issued the sixth day of October, one thousand seven hundred and ninety-five, there is granted by the said Commonwealth unto Samuel M. Hopkins a certain tract or parcel of land containing two hundred thousand acres, by survey bearing date the tenth day of December, one thousand seven hundred and ninety-five, lying and being in the county of Kenhawa, and is bounded as followeth, to wit: Beginning at a beech tree on a branch of the left-hand fork of Pocatalico, which runs there nearly south 20° west, the same being corner to a survey of 53,000 acres made for Samuel Hollingsworth; and thence running north 45° west 4,490 poles, to a sugar tree eight inches in diameter, on the bank of a rivulet running northeast, crossing the head branches of Mill Creek and 18-mile Creek, as marked in the plat; thence north, crossing waters of Mill Creek, 674 poles, to a poplar 18 inches diameter, marked S. M. H., standing on the north side of a branch of Mill Creek, running northeasterly close to the water; thence north 45° east 840 poles, crossing several
118 branches; also crossing Mill Creek to a black oak 9 inches in diameter, 2 small white oaks and a gum on the east bank of the creek about 80 poles above the rapids, the black oak marked S. M. H.; thence N. 16° west 109 poles, crossing the creek twice, to a Spanish oak three feet diameter, on the bank of the creek, below the rapids, marked on two sides as a corner, and also marked S. M. H. with a hatchet; thence, down the creek by the different meanders thereof, and binding thereon, 1,179 poles, to the mouth of the creek on the upper side; thence, up the Ohio River, by the different meanders thereof, and binding thereon, crossing several creeks, as specified in the plat, 10,126 poles, to an elm 4 feet in diameter, two sugar trees, and a beech, on the bank of Ohio River, corner to the counties of Kenhawa and Harrison; thence, with the division line with said counties, south 55° east, crossing waters of Lee Creek and Little Kenhawa, as specified in the plat, 11,383 poles, to pointers; thence S. 45° west 3,945 poles, to 2 beech trees by a branch of Little Kenhawa, corner to a survey made for Thomas Matthews of 2,000 acres, and with his line up said branch north 60° W. 362 poles, to a white oak, corner to said survey, and also corner to a survey of 3,098 acres made for Charles Patterson, and continuing course with said Patterson's line 546 poles, to 2 sugar trees growing from one root,
119 about 20 poles from a branch of Little Kenhawa, crossing a branch of the same at 320 poles; thence south 30° W. 910 poles, to a beech in the forks of a branch of a left-hand fork of the head of the south fork of Pocatalico, about half a mile up said fork, being corner to said Patterson's survey, and also corner to a survey of 53,000 acres made for Samuel Hollingsworth; thence, with nine of his lines crossing waters as marked in the plat, north 15° W. 290 poles, to a beech and lynn in the forks of a creek; N. 35° west 630 poles, to a beech by a branch; north 45° west 260 poles, to a large poplar and chestnut oak; south 45° west 360 poles, to a white oak and poplar on the west side of a hill; south 35° west 660 poles, to a sugar tree and beech on a large branch running northerly; S. 54° west 1,980 poles, to a lynn and sugar tree on the bank of a small branch; south 80° west 590 poles, to a large poplar; south 55° west 320 poles, to a poplar and maple on a head branch

No 280 Armstrong vs: Morrill.

Page - 116 -



of Mill Creek; south 9° east 460 poles, to the beginning. But it is always to be understood that the survey upon which this grant is founded includes 227,460 acres, exclusive of the above quantity of 200,000 acres, all of which, having a preference by law to the warrants and rights upon which this grant is founded, liberty is reserved that the same shall be firm and valid, and may be carried into grant or grants; and this grant shall be no bar in either law or equity to the confirmation of the title or titles to the same as before-mentioned and reserved, with its appurtenances; to have and to hold the said tract or parcel of
120 land, with its appurtenances, to the said Samuel M. Hopkins, (except as before excepted,) and his heirs, forever.

In witness whereof the said Robert Brooke, esquire, governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, the first day of July, in the year of our Lord one thousand seven hundred and ninety-six, and of the Commonwealth the twentieth.

[L. S.] R. BROOKE.

The foregoing is a true copy from the records of the Virginia land office.

[VA. L. OFFICE SEAL.] R. E. NASH,
Reg. Va. L. Office.

The defendants also gave in evidence a copy of a deed from Oliver Wolcott and others to James T. Watson, dated 22nd day June, 1808, certified by the recorder of the county of Mason, in the words and figures following, to wit:

Deed of Wolcott & others to J. T. Watson.

This indenture, made the twenty-second day of June, in the year one thousand eight hundred and eight, between Oliver Wolcott, of the
121 city of New York, esquire, of the first part; Mary Watson, of the same city, widow, of the second part; Samuel M. Hopkins, of the same city, counsellor at law, of the third part; and James T. Watson, of the same city, gentleman, of the fourth part, witnesseth: Whereas by four several indentures, made the eighteenth day of February, in the year one thousand eight hundred and six, between the said Samuel M. Hopkins, of the first part; James Watson, of the same city, esquire, of the second part; and the said Oliver Wolcott, of the third part; the said Samuel M. Hopkins, by the assent of the said James Watson, did convey or release unto the said Oliver Wolcott, in fee, several tracts of land in the Commonwealth of Virginia, in the said indentures more particularly described; that is to say, by one of said indentures a certain tract or parcel of land containing seventy thousand two hundred and two acres, lying and being in the now county of Kenhawa, on the south side of Sandy River, and between Sandy and Guyandotte Rivers, and on Twelvepole Creek, and the branches thereof; which tract of land, by certain letters patent of the said Commonweath, bearing date on or about the second day of July, in the year one thousand seven hundred and ninety-six, was granted, or purported to be granted, to the said Samuel M. Hopkins, as assignee of Gordon Cloyd, and which in said letters patent is more particularly described. And by another of said indentures, a certain other tract of land now or late in the county of Montgomery, con-
122 taining eighty thousand acres, on the west side of New River, and on the branches thereof, namely, Wolf Creek, East River, Island Creek, and Brush Creek, and the waters thereof, which last-mentioned

tract of land, by certain letters patent of said Commonwealth bearing date on or about the fourth day of July, one thousand seven hundred and ninety-six, was granted to the said Samuel M. Hopkins, as assignee of John Seyburn and Thomas Cloyd, and in the said letters patent is more particularly described. And by another of said indentures a certain other tract of land, now or late in the county of Kenhawa, containing two hundred thousand acres, lying southward of the Ohio River and adjoining the line of Harrison County; which last-mentioned tract of land was, by certain letters patent of said Commonweath bearing date on or about the first day of July, in the year one thousand seven hundred and ninety-six, granted to the said Samuel M. Hopkins, and in said letters patent is more particularly described. And by the other of said indentures reciting that by certain several letters patent of said Commonwealth, bearing date some days in the month of July, in the year one thousand seven hundred and ninety-six, there had been granted unto the said Samuel Hopkins divers other tracts of land in said Commonwealth, namely, one tract of fifty thousand acres in Kenhawa
123 County, on some waters of Ohio and Guyandotte Rivers, being above Guyandotte; one tract of four thousand and seventy acres, on the west side of Kenhawa River, in Montgomery; one other tract of eight thousand four hundred acres, on some waters of Roanoke, in the same county; and one other tract of eleven thousand five hundred acres in the same county. All of which tracts mentioned in said last-mentioned indenture, it was therein also stated were believed to have been conveyed by said Samuel M. Hopkins, with the assent or authority of the said James Watson, as is therein mentioned, but in relation to which said Samuel M. Hopkins might have some legal rights as is therein more particularly mentioned. It was thereupon witnessed that said Samuel Hopkins, with the assent of said James Watson, did grant, remise, quitclaim, and release to the said Oliver Wolcott, in fee all his remaining right, title, interest, claim, equity, action, right of action, and demand whatever, of, in, and to the several tracts of land last aforesaid, subject to certain rights of said Samuel M. Hopkins to make certain conveyances of the four last-mentioned tracts, as in the last-mentioned indenture is stated. And whereas by a certain deed poll, bearing date the nineteenth day of February, in the year one thousand eight hundred and six, the said Oliver Wolcott declared all the lands and prem-
124 ises therein and thereby conveyed to be on trust for the sole and proper benefit and behoof of the said James Watson, his heirs and assigns, but subject to a certain declaration of trust made by a certain indenture bearing date the eighteenth day of February, in the year one thousand eight hundred and six, between the said James Watson, Oliver Wolcott, and Samuel M. Hopkins, to indemnify the said Samuel M. Hopkins in the manner therein mentioned; and whereas the said James Watson is since deceased, leaving the said James T. Watson, his only son and child, and the person principally interested in his estate; and the parties to these presents are willing that the lands and premises aforesaid should be conveyed to the said James T. Watson in fee simple, absolute and discharged of all trusts: To the end that he may be able to make absolute conveyance thereof, for which purpose the said Mary Watson, being the widow of said James Watson, and interested in his estate, joined in these presents, now, therefore, this indenture witnesseth that the said Oliver Wolcott, in consideration of the premises, and of five dollars paid him by the said James T. Watson, the receipt of which is hereby acknowledged, and by and with the consent of the said Mary Watson and Samuel M. Hopkins, hath granted, bargained, sold

125 released, and conveyed, and doth hereby grant, bargain, sell, release, and convey, unto the said James T. Watson, and his heirs and assigns, all the several tracts of land and premises hereinbefore mentioned or described, or intended so to be, and all the estate, right, interest, title, trust, claim, or demand of the said Oliver Wolcott, of, in or to the same; together with all the rights, members, hereditaments, and appurtenances to the same belonging, or anywise appertaining, and the revision and revisions, remainder and remainders, rents, issues, and profits thereof; and the said Samuel M. Hopkins and Mary Watson, severally, in consideration of fifty cents, to each of them paid by said James T. Watson, have remised, released, and forever quitclaimed unto him, his heirs and assigns, all trusts, equities, interest, residuary share, proportion, claim, or demand, which they, or either of them, have in or to the lands and premises aforesaid, excepting only that with regard to the four tracts of land mentioned in the indenture herein lastly before in part recited, the said Samuel M. Hopkins reserves the right to make such conveyance of those four tracts of land, as by any contract or obligation he may be liable to make in such manner as in the said last hereinbefore in part recited indenture is more particularly mentioned. And this indenture is to be taken and deemed subject to such exception.

126 To have and to hold the premises to the said James T. Watson, his heirs and assigns, and for his and their own use; and the said Oliver Wolcott, for himself and his heirs, doth covenant with the said James T. Watson, his heirs or assigns, that he hath not knowingly or wilfully done any act, deed, matter, or thing whereby the title to the before granted and released premises is or may be in any manner conveyed away, impeached, or encumbered.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

OLIVER WOLCOTT. [SEAL.]
MARY WATSON. [SEAL.]
SAM'L M. HOPKINS. [SEAL.]
JAMES T. WATSON. [SEAL.]

Sealed and delived in presence of—
L. REGAIL, *witness to signature of S. M. Hopkins and Oliver Wolcott.*
WM. G. BALL, *witness to signature of Mary Watson only.*
SAMUEL ROGERS, *witness to signature of all the parties.*

Witness to the execution by S. M. Hopkins:
A. WROGER.
A. ROGERS.
ROBERT WALKER.

DISTRICT OF NEW YORK, *sct*:

127 On the 15th July, 1813, before me, Brockholts Livingston, an associate justice of the Supreme Court of the United States, came Samuel Rogers, a subscribing witness to the execution of the within deed, who, being duly sworn, said that he saw all of the grantors within named execute the said deed; and that he set his name as witness to such execution. I do therefore allow it to be recorded.

B. LIVINGSTON.

Witnesses to the signature of Mary Watson:
AN. ROGERS.
ROBERT WALKER.
HENRY CRUGERDEER.

CITY OF NEW YORK, *sct:*

By DeWitt Clinton, mayor of the city of New York, it is hereby certified that, on the sixth day of April, A. D. 1814, personally appeared before me, the said mayor, Samuel Rogers, who, being by me duly sworn, did depose and say that he saw Oliver Wolcott, Mary Watson, and Samuel M. Hopkins execute the annexed instrument as their voluntary act and deed, for the purpose therein mentioned; and on the 20th day of April, A. D. 1814, personally appeared Robert Walker, who, being by me duly sworn, did depose and say that he saw Mary Watson and Samuel M. Hopkins execute the said instrument as their voluntary act and deed, for the purposes therein mentioned; and on the twen-
128 tieth day of April aforesaid appeared Henry Crugerhern, who, being duly sworn, did say that he saw Mary Watson execute said instrument as her voluntary act and deed, for the purpose mentioned therein; and on the twenty-fourth day of May, A. D. 1814, personally appeared L. Regail, who, being by me duly sworn, did depose and say that he saw Samuel M. Hopkins execute the said instrument as his voluntary act and deed, for the purposes therein mentioned, and that he signed his name as a witness thereto; and on the 6th day of June, 1814, appeared before me Oliver Wolcott and acknowledged that he executed the annexed deed as his voluntary act, for the uses and purposes therein mentioned.

In witness whereof I have hereunto subscribed my name and caused the seal of mayoralty to be affixed this 6th day of June, 1814.

[SEAL.] DEWITT CLINTON.

At a court held for Cabell County, the 2d day of August, 1814, an indenture between Oliver Wolcott, of the first part, Mary Watson, of the second part, Samuel M. Hopkins, of the third part, and James T. Watson, of the fourth part, was this day presented in court, and it appearing to the court, from the certificate of DeWitt Clinton, mayor of the
129 city of New York, that the said indenture has been regularly proven and acknowledged before the said mayor, the same is admitted and ordered to be recorded.

A copy. Teste: EDMOND MORRIS, *Clk C.*

VIRGINIA, *to wit:*

At Giles, August court, 1827, this deed from Oliver Wolcott, Mary Watson, and Samuel M. Hopkins to James T. Watson, which had been acknowledged and proven before DeWitt Clinton, mayor of the city of New York, was presented into court and ordered to be recorded.

Teste: DAVID FRENCH, *C. G. C.*

MASON COUNTY CLERK'S OFFICE,
June 17th, 1829.

VIRGINIA:

The within deed from Oliver Wolcott, Mary Watson, and Samu'l M. Hopkins to James T. Watson, was this day recorded in my office on the certificates annexed thereto of its due acknowledgment, or as proven by subscribing witnesses.

WILLIAM STERRITT, *C. M. C.*

A copy. Teste:

F. W. SISSON,
Recorder Mason County, West Va.

Also a copy of the same last-mentioned deed, certified by the clerk of

the county court of Wood County, in the words and figures following, to wit:

This indenture, &c., (being a copy of the same deed last above recited.)

Together with a certificate of recordation of the same in the county court of Wood County in the following words and figures, to wit:

130 Wood County court.—September term, 1827.

The foregoing indenture, between Oliver Wolcott, of the first part, Mary Watson, of the second part, Samuel M. Hopkins, of the third part, and James T. Watson, of the fourth part, was presented in open court, and, together with the several certificates of authentication, and all things relating thereto, on motion of James T. Watson, one of the parties thereto, ordered to be recorded.

Teste: J. H. NEAL, *C. W. C.*

A true copy from the record of Wood County.

Teste: WILL HATCHER, *C. W. C.*

Bill of exceptions continued.

The defendants further offered evidence tending to shew that the said patent to Samuel M. Hopkins embraced within its exterior boundaries the entire tract of 1,500 acres claimed by the plaintiffs in this suit, and that the same was located as laid down in the aforesaid plats and reports of Surveyor Park. The defendants also offered in evidence a plat and certificate of a survey made for Savary, No. 17, dated August 26th, 1784, for 1,000 acres; also a plat and certificate made for same, No. 6, dated September 3d, 1784, for 1,500; also plat and certificate made for Albert Gallatin, No. 7, dated September 3d, 1784, for 1,200 acres; also plat and certificate of survey for Gallatin, No. 8, dated September 3d,
131 1784, for 1,330 acres. (These four several plats and certificates of survey will be found hereinbefore copied and inserted as Exhibits "D," "H," "F," & "G," respectively, in the report above recited, of Surveyor Park, which see.)

The defendants also offered evidence tending to prove that James T. Watson, claiming under the said patent to Samuel M. Hopkins, and the deed to himself above recited, took actual and bona fide possession, in the year 1827, of the lands in controversey, as well as of the coterminous surveys of Savary and Gallatin above recited, as shown by the diagram of Robert Park aforesaid, and tending to prove that such possession continued up to the 1st of November, 1836, and afterwards. And the said defendants also offered evidence tending to prove that as early as the month of September, 1834, the said James T. Watson had discharged all taxes and damages assessed and charged against him upon said 200,000 acres of land, and all such taxes and damages as ought to have been charged thereon against him; and also offered evidence tending to prove that the said James T. Watson, from and after the date last aforesaid, paid and discharged all the taxes assessed or chargeable upon said land, up to the year 1840, as the same became due. The defendants also gave in evidence the title bond of Henry Nixon and Maria Nixon, his wife, and Benjamin Harrison, to the defendant
132 Armstrong, dated the 19th day of December, 1832, in the words and figures following, to wit:

We, Henry Nixon and Maria, his wife, of the city of Philadelphia,

State of Pennsylvania, and Benjamin Harrison, of Charles City, county and State of Virginia, doe bind ourselves, our heirs, &c., in the penal sum of two hundred dollars, lawful money of Virginia, that we, or either of us, do make or cause to be made, a good and sufficient deed in fee simple, to James Armstrong, his heirs or assigns, for a certain tract or parcel of land, to contain four hundred acres, situate in Jackson County, Virginia, adjoining John Swan's original south line, commencing fifty poles easterly from Peter Cleek's poplar corner; thence, running a parallel line with Cleek's line from the poplar corner, and with John Swan's original line, N. 74 E, so as to contain four hundred acres, to be laid of in a square or oblong as the s'd Armstrong may chuse, the deed to be made on or before the last payment.

In witness whereof we have hereunto set our hands and seals this 19th day of December, 1832.

HENRY NIXON. [SEAL.]
MARIA NIXON. [SEAL.]
BENJAMIN HARRISON, [SEAL.]
By EZEKIEL McFARLAND,
Agent for B. Harrison.

Signed and sealed in preasants of—
ISAAC LOCKHART.
CALVIN ARMSTRONG.

133 The defendants also gave in evidence a patent to Jacob Starcher, from the Commonwealth of Virginia, for 40 acres of land, dated on the 2d day of August, 1819, in the words and figures following, to wit:

Patent to Jacob Starcher—40 acres.

James P. Preston, esq'r., governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye that, in conformity with a survey made on the thirtieth day of January, 1818, by virtue of a land office treasury warrant, number 5,609, issued the 22nd February, 1816, there is granted by the said Commonwealth unto Jacob Starcher, assignee of David Sayre, senior, a certain tract or parcel of land containing forty acres, situate in the county of Mason, and bounded as followeth, to wit: Beginning at a poplar corner, to George Click's, on the left-hand side of Big-mill Creek, and running thence, with the line of said Click, S. 52° W. 190 poles, to a beech stump on the bank of said Mill Creek; and leaving said line, with a line of Jacob Starcher, N. 19° E. 90 poles, to an ash; and, leaving said line, N. 59° E. 98 poles, to a white oak on the side of a hill; and thence S. 65° E. 43 poles, to the beginning; to have and to hold the said tract or

134 parcel of land, with its appurtenances, to the said Jacob Starcher and his heirs, forever.

In witness whereof the said James P. Preston, esq'r., governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the second day of August, in the year of our Lord one thousand eight hundred and nineteen, and of the Commonwealth the forty-fourth.

[L. S.]

JAMES P. PRESTON.

(Endorsed:) Jacob Starcher hath title to the within-granted land.

WM. G. PENDLETON, *Reg. L. Off.*

(The above is the patent marked "E," and referred to in the verdict of the jury in this cause.)

They also gave in evidence a copy of a deed from the heirs of said Jacob Starcher to defendant Armstrong for thirty-three acres of said land, dated the 19th day of March, 1844, in the words and figures following, to wit:

Deed Starcher's heirs to Armstrong.

This indenture, made this 19th day of March, one thousand eight hundred and forty four, between John C. Starcher and Charity Starcher, his wife; William Starcher and Sarah, his wife; Abram Starcher and Margaret, his wife; Philip Starcher and Elizabeth, his wife; Manley Starcher and Elizabeth, his wife; Joseph Rhodes and Sarah, his wife; heirs of Jacob Starcher, deceased, of the county of Jackson, and
135 State of Virginia, of the first part, and James Armstrong of the county and State aforesaid, of the second part, witnesseth that for and in consideration of the sum of one hundred and fifty dollars to the said John C. Starcher and Charity, his wife; William Starcher and Sarah, his wife; Abram Starcher and Margaret, his wife; Philip Starcher and Elizabeth, his wife; Joseph Rhodes and Sarah his wife, the said heirs of Jacob Starcher, in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth bargain, sell, and convey, unto the said James Armstrong a certain tract or parcel of land lying and being in the county of Jackson, near Big-mill Creek, and bounded as follows, to wit: Beginning at a poplar, corner to Peter Cleek, on the left-hand side of Big-mill Creek, and running thence, with the line of said creek, S. 52 W. 190 poles, to a beech stump or the bank of said Mill Creek; and leaving said line, with a line of Jacob Starcher, N. 19 E. 90 poles, to an ash; and leaving said line, N. 59 E. 98 poles, to a white oak on the side of a hill; and thence S. 65 E. 34 poles, to the beginning; containing forty acres, be the same more or less; it being a tract of land pattented to the said Jacob Starcher, bearing date the second day of August, in the year one thousand eight hundred and nine-
136 teen, to have and to hold the said land aforesaid unto him, the said James Armstrong, and to his heirs and assigns, forever, free from one or each of our heirs, and no others, we will warrant and defend by these presents.

In witness whereof they, the parties of the first part, hath hereunto set their hands and affixed their seals the day and year first above written.

JOHN C. STARCHER. [SEAL.]
CHARITY STARCHER. [SEAL.]
WILLIAM STARCHER. [SEAL.]
ABRAHAM STARCHER. [SEAL.]
PHILIP STARCHER. [SEAL.]
ELIZABETH STARCHER. [SEAL.]
MANLY STARCHER. [SEAL.]
ELIZABETH STARCHER. [SEAL.]
JOSEPH his + mark. RHODES. [SEAL.]
SARAH her + mark. RHODES. [SEAL.]

JACKSON COUNTY, *to wit:*

We, John Korms and John Armstrong, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that Charity Starcher, wife of John C. Starcher; and Sarah Starcher, wife of William Starcher; Elizabeth Starcher, wife of Philip Starcher; Elizabeth Starcher, wife of Manley Starcher, parties to a certain deed bearing date on the 19th day of March, and hereunto annexed, personally appeared before us in our county aforesaid, and being examined by us, privily
137 and apart from their husbands, and having the deed aforesaid fully explained to them, the said Charity Starcher, wife of John C. Starcher; Elizabeth Starcher, wife of Philip Starcher; Elizabeth Starcher, wife of Manley Starcher, acknowledged the same to be their act and deed, and declared that they had willingly signed, sealed, and delivered the same, and they wished not to retract it.

Given under our hands this 19th day of March, 1844.

JOHN KORMS. [SEAL.]
JOHN ARMSTRONG. [SEAL.]

JACKSON COUNTY, *to wit:*

We, John Armstrong and John Korms, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that John C. Starcher, William Starcher, Abram Starcher, Philip Starcher, and Manley Starcher, parties to a certain deed bearing date on the 19th day of March, and hereunto annexed, personally appeared before us in our county aforesaid, and acknowledged the same to be their act and deed, and desired us to certify the said acknowledgment to the clerk of the county court of Jackson County, in order that the said deed may be recorded. Given under our hands and seals this 19th day of March, 1844.

JOHN ARMSTRONG. [SEAL.]
JOHN KORMS. [SEAL.]

JACKSON COUNTY, *to wit:*

138 We, John Armstrong and N. Smith, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that Sarah Rhodes, wife of Joseph Rhodes, parties to a certain deed bearing date on the 19th day of March, and hereunto annexed, personally appeared before us in our county aforesaid, and being examined by us privily, and apart from her husband, and having the deed aforesaid fully explained to her, she, the said Sarah Rhodes, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it. Given under our hands and seals this 30th day of March, 1844.

JOHN ARMSTRONG. [SEAL.]
N. SMITH. [SEAL.]

JACKSON COUNTY, *to wit:*

We, John Armstrong and N. Smith, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify Joseph Rhodes, a party to a certain deed bearing date on the 19th day of March, and hereunto annexed, personally appeared before us, in our county aforesaid, and acknowledged the same to be his act and deed, and desired us to certify the said acknowledgment to the clerk of the county court of Jackson, in order that the said deed may be recorded.
139 Given under our hands and seals this 30th day of March, 1844.

JOHN ARMSTRONG. [SEAL.]
N. SMITH. [SEAL.]

JACKSON COUNTY COURT CLERK'S OFFICE,
May 17th, 1846.

VIRGINIA:

This day the foregoing deed was received in said office, and, together with the certificates therein written, duly admitted to record in said office.

Teste: A. WAUGH, *Clk.*

JACKSON COUNTY RECORDER'S OFFICE,
April 22d, 1869.

STATE OF WEST VIRGINIA:

I, W. H. H. King, recorder of said county, do certify that the foregoing is a true abstract from the records of this office.

W. H. H. KING, *Recorder.*

And they further gave evidence tending to prove that the lands embraced in the title bond aforesaid are correctly designated and laid down on the diagram aforesaid of Robert Park, surveyor, and within the bounds of the land in controversy; and they also offered evidence tending to prove that a portion of the land embraced in the Starcher patent was within the bounds of the land in controversy. They also offered evidence tending to prove that the said Jacob Starcher entered upon and took actual possession of the lands in his patent, and within the bounds of the land in controversy, in 1820, or shortly thereafter; and that he, his heirs, and the defendant Armstrong, holding
140 under said 40-acre patent, had and have continued said possession without interruption up to the present time. They also offered evidence tending to prove that the said James Armstrong, on the 1st day of January, 1833, entered upon and took actual possession of said 420 acres, claiming and holding the same under his title bond aforesaid, and that such possession has been continued without interruption up to the present time.

And thereupon the defendants prayed the court to give the following instructions to the jury, to wit: Defendants' instructions numbered 1, 2, 3, 4, and 5, and each of them severally.

First. That the reservation in the patent to Samuel M, Hopkins, dated July 1st, 1796, was of lands, the titles to which were inchoate, and not of lands which had been granted by patent previous to the date of Samuel M. Hopkins' survey and entry.

Second. That said patent to Samuel M. Hopkins covered all lands lying within the exterior boundaries of his survey, for which patents had issued previous to his entry, survey, and patent, and became a junior grant to that issued to Albert Gallatin, and under which the plaintiffs in this suit claim.

Third. That if the jury shall believe from the evidence that
141 James T. Watson was the owner of the land described in the patent to Samuel M. Hopkins at the time the land in controversy became forfeited to the Commonwealth as aforesaid; that he was on the 27th day of February, 1835, and up to the time of the forfeiture, in the actual bona fide possession, by himself or tenant, of the land in controversy, or any part thereof, under the Hopkins' patent aforesaid; and that said Watson had at the date of such forfeiture discharged all taxes and damages duly assessed and charged against him upon said land, and all such taxes and damages as ought to have been charged thereon against him, then the title of those under whom the plaintiffs claim to

the land in controversy inured to and vested in the said Watson, and the plaintiffs cannot maintain this action.

Fourth. If the jury are satisfied from the evidence that adversary possession commenced before 1st of November, 1836, and the same possession continued during the time of the forfeiture, as well as from the 8th May, 1845, the time of redemption, up to the time of the institution of this suit, and by adding the time of adversary possession before forfeiture to the adversary possession after redemption makes a period of fourteen years, then they must find for the defendants, or such of the defendants as make out the fourteen years as aforesaid.

142 Fifth. That the act of 1844, which authorized Dundas and Kugler to redeem the lands therein specified, did not so operate as to relieve them from the effect of the statute of limitations, which had commenced runing for defendants before the forfeiture, for the time the land in controversy was so forfeited, if the jury believe the defendants continued their possession without interruption during the forfeiture, and up to the time of redemption; and that the defendants continued the possession to the time of the institution of this suit.

Which motion being considered by the court, the court refused to give said instructions, or any or either of them, and rejected each and all of them, but in lieu thereof, and of instructions asked for by the plaintiffs, the court gave to the jury the following instructions, marked respectively A, B, C, D, E, F, to wit:

A. The plaintiffs having offered in evidence the certificate of the auditor of public accounts of Virginia, dated February 22nd, 1869, for the purpose of showing that the tract of 1,500 acres of land patented to Albert Gallatin on the 10th day of February, 1786, had been entered on the commissioner's books in the name of Dundas and Kugler, and that the taxes had been assessed thereon and paid by the said Dundas and Kugler, so as to entitle them to the benefits of an act passed

143 February 12th, 1844, by the general assembly of Virginia. Upon this state of facts, (the plaintiffs moved the court to instruct) the jury that the certificate must be held as conclusive respecting the entry of said lands, assessment of taxes, and payment thereof, unless disproved by evidence in the cause. Which was given.

B. To defeat a recovery in this cause under the statute of limitations, the defendants must have held unbroken and uninterrupted adverse possession of the premises in controversy for a period of 14 years prior to the institution of this suit. To constitute such adverse possession, the defendant must have held possession of the premises by residence, improvement, cultivation, or other open, notorious, and habitual acts of ownership for 14 years previous to the institution of this suit. If the jury believe from the evidence that the defendant Armstrong was a resident and owner of a lot in the town of Ripley, and in the immediate vicinity thereof he owned a tract of woodland, being part of the land in controversy, from which land, claiming it as his own, he, from the beginning of the year 1833, openly, notoriously, and habitually cut and hauled his necessary supply of fuel, and also the timber necessary for the construction of various houses on his lot aforesaid; and also did cut and carry away saw-logs, and all the tan-bark which he used in his tan-yard on his lot aforesaid; and after 3 or 4 years use of it in that way enclosed portions of said land, such acts and use are equivalent to adversary possession from the time such use commenced.

C. If the defendant Carney claimed title to the tract of land described in the declaration, or any part thereof, at the time of the institution of

this suit, and the plaintiffs, or either of them, had the right to the possession thereof, this action may be maintained against him.

D. The grant to Hopkins, embracing within its exterior boundaries 227,460 acres of land, which is reserved and excepted to prior claimants, does not operate to divest them of their title, unless they fail to show themselves entitled to the land under said reservation;
144 nor does the said grant pass any legal title to the grantee of lands so reserved and excepted by it, where the same have been previously appropriated and granted by the Commonwealth, inasmuch as it appears that the patentee gets all the lands he paid for, or for which he is chargeable with taxes.

E. To secure to the defendants, or those who claim under the Watson title, the benefit of the forfeiture of the Gallatin title, the jury must be satisfied that the Hopkins grant is the younger, covers and includes the land in controversy; and that Watson and those claiming under him were in the actual possession of the said land, claiming the same in good faith, having discharged all the taxes due the State duly assessed and charged against said land, as well as all taxes that should have been assessed and charged against the same, from the date of the deed from Hopkins to Watson; otherwise the forfeiture of the Gallatin title would not, under the act of the general assembly, passed in 1835, be transferred to the said Watson, or those claiming under him.

F. If the jury believe from the evidence that Watson, or those claiming under him, entered upon the 1,500 acres claimed by the plaintiffs in 1832–'3–'4–'5 or '6, and that the same became forfeited by the fail-
145 ure of the owners to enter the same upon the books of the commissioner of the revenue of the proper county, and pay the taxes properly chargeable thereon, the same became vested in the Commonwealth, by operation of law, on the 1st day of November, 1836, and the possession of the defendants upon the said 1st day of November, 1836, terminated, and the possession of the land passed into and remained in the Commonwealth until the same was transferred to James Dundas and Benjamin Kugler, by the act of the 12th of February, 1844; and the adverse possession acquired by the said defendants before 1st day of November, 1836, cannot be connected with the adverse possession acquired by the defendants after Dundas and Kugler became revested with the title of the Commonwealth under the act passed for their relief on the 12th of February, 1844.

To which opinion of the court, refusing to give the instructions asked for by the defendants, or any or either of them, the said defendants hereby except; and to the opinion of the court giving the instructions aforesaid, and each and every of them, the said defendants hereby further except, and pray that these, their exceptions, each and all, may be saved, signed, sealed, and reserved to them; which is done accordingly.

JOHN J. JACKSON, JR. [SEAL.]

Second bill of exceptions.

146 MEMORANDUM.—That upon the trial of this cause, the plaintiffs, to sustain the action on their part, gave in evidence a deed from Robert Morris and wife, John Nicholson and wife, and James Greenleaf, to Thomas Willing & others, dated on the 5th day of March, 1795, in the words and figures following, to wit: (This is the same deed referred to in the defendants' first bill of exceptions, and hereinbefore copied, together with all its certificates of acknowledgment, recordation, &c., annexed.) Also the act of February 12th, 1844, for the relief of James

Dundas and Benjamin Kugler, passed by the general assembly ginia, to be read from the act and not copied. The plaintiffs, fu sustain their action, offered in evidence a paper purporting to be a disclaimer on the part of Thomas Willing, bearing date on the 19th day of December, 1806, in the words and figures following, to wit: (This is the same paper referred to in the defendants' first bill of exceptions, and therewith copied into this record.) And at the same time read the deposition of Charles N. Banker, and by a witness who identified said last-mentioned writing purporting to be a disclaimer, as the same paper spoken of in said diposition. Thereupon the defendants objected to the said paper as being insufficient as a disclaimer of title under the
147 deed aforesaid, the same not being under seal, also to each and every part thereof not being necessary to make a disclaimer, and therefore not proper proof, the same not being on oath, but the mere declaration of Willing, and no part of the disclaimer aforesaid; and for other reasons apparent from the paper aforesaid, and the facts above recited. But the court overruled the objections, and permitted said paper to be offered as evidence in the cause by the plaintiffs; to which opinion of the court admitting the paper aforesaid, and each, every or any part or parcel thereof, to be given in evidence to the jury, the defendants, by their counsel, except and pray that these their exceptions may be signed, sealed, and reserved to them, and the same is done accordingly.

JOHN J. JACKSON, JR. [SEAL.]

It is agreed by the parties that all the acts of the general assembly of Virginia, applicable to the matters in controversy in this suit may be read in the trial of this cause in the Supreme Court of the United States from the printed and published copies. It is agreed by plaintiff that execution in this cause shall be stayed for 90 days from the rising of this court.

SMITH & MILLER, *for Def'd'ts.*
G. D. CAMDEN, *Att'y for Plaintiffs.*

148 UNITED STATES OF AMERICA,
District of West Virginia, ss:

I, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, holden at Charleston, do certify that the foregoing is a true transcript of the record and proceedings in an action of ejectment lately depending in said court, wherein Lot M. Morrill and others are plaintiffs, and James Armstrong and others are defendants, with all things concerning the same.

In testimony whereof I have hereunto set my hand and the seal of the said court, at Charleston, this fourth day of June, in the year one thousand eight hundred and sixty-nine, and in the 93d year of the independence of the United States of America.

[SEAL.]

JASPER Y. MOORE,
Clerk U. S. D. C. Dist. W. Va.

Clerk's fee for record, $70.

149 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judge of the district court of the United States for the district of West Virginia, holden at Charleston, greeting:

Because in the record and proceedings, as also in the rendition of the

judgment of a plea which is in the said district court before you, between Lot M. Morrill, James Dundas, Benjamin Kugler, and William M. Tilghman, plaintiffs, and James Armstrong, Jonathan Hyres, and Jesse Carney, defendants, the judgment aforesaid was rendered against said defendants and in favor of the said plaintiff, Lot M. Morrill, alone, a manifest error hath happened to the great damage of the said defendants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties defendants aforesaid in this behalf on the judgment aforesaid in favor of Lot M. Morrill, do command you, if the judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that,
150 the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the 21st day of June, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] Teste: J. B. JACKSON,
Clerk of the Circuit Court of the United States Dist. of West Va.

Allowed by—

JOHN J. JACKSON, JR.,
Judge Dist. C't U. S. Dist. West Va.

151 (Indorsed:) James Armstrong & others vs. Lot M. Morrill & others. Writ of error.

Filed in the clerk's office of the district court of the United States for the district of West Virginia, at Charleston, July 1st, 1869, and copies of this writ of error and the citation in same cause retained in said office.

Teste: JASPER Y. MOORE,
Clerk U. S. D. C. D. W. V.

Certificate & seal, $1 25 c'ts.—J. B. J.

152 Know all men by these presents that we, James Armstrong, Jonathan Hyre, Solomon Harpold, and John M. Greer, are held and firmly bound unto Lot M. Morrill in the full and just sum of two thousand dollars, to be paid to the said Morrill, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 10th day of June, in the year of our Lord one thousand eight hundred and sixty-nine.

The condition of the above obligation is such, that whereas at a district court of the United States for the district of West Virginia, held at Charleston, on the 29th day of April, 1869, in an action of ejectment therein pending, wherein Lot M. Morrill & others were plaintiffs, and James Armstrong, Jonathan Hyre, and Jesse Carney were defendants, the said Lot M. Morrill recovered against said defendants the possession of a tract of 1,500 acres of land, excepting only 40 acres thereof, lying in

the county of Jackson, State of West Virginia, and the costs of said suit, and one cent damages.

And whereas the said defendants have applied to the Supreme Court of the United States for a writ of error to and supersedeas of said
153 judgment, now, if the said James Armstrong & others, defendants aforesaid, shall obtain and prosecute said writ of error with effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

JAMES ARMSTRONG. [SEAL.]
JONATHAN HYRE. [SEAL.]
SOLOMON HARPOLD. [SEAL.]
JOHN M. GREER. [SEAL.]

Attest:
JOHN H. RILEY.
V. S. ARMSTRONG.

STATE OF WEST VIRGINIA, *County of Jackson, ss:*

I, Jas. D. W. Riley, clerk of the circuit court of Jackson County, do hereby certify that James Armstrong, Jonathan Hyre, Solomon Harpold, and John M. Greer personally appeared before me in my office, and severally acknowledged the foregoing signatures as being genuine.

Given under my hand and official seal this 21st day of June, A. D. 1869.

[L. S.] J. D. W. RILEY, *Clerk.*

154 Approved by—

JOHN J. JACKSON, JR.,
Judge of the District Court of the United States for the District of West Virginia.

A copy. Teste:

JASPER Y. MOORE,
Clerk U. S. D. C. D. W. V.

The original bond, of which the foregoing is a copy, was filed in the clerk's office of the district court of the United States for the district of West Virginia, on the 22d day of June, 1869.

Teste: JASPER Y. MOORE, *Clerk.*

155 The United States of America to Lot M. Morrill, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the district of West Virginia, at Charleston, wherein James Armstrong, Jonathan Hyres, and Jesse Carney are plaintiffs in error, and you are defendant in error, to shew cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John J. Jackson, jr., judge of the district court of the United States for the district of West Virginia, and the seal of said court, at Charleston, the fourteenth day of October, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] JOHN J. JACKSON, JR.

156 UNITED STATES OF AMERICA,
District of West Virginia, set:

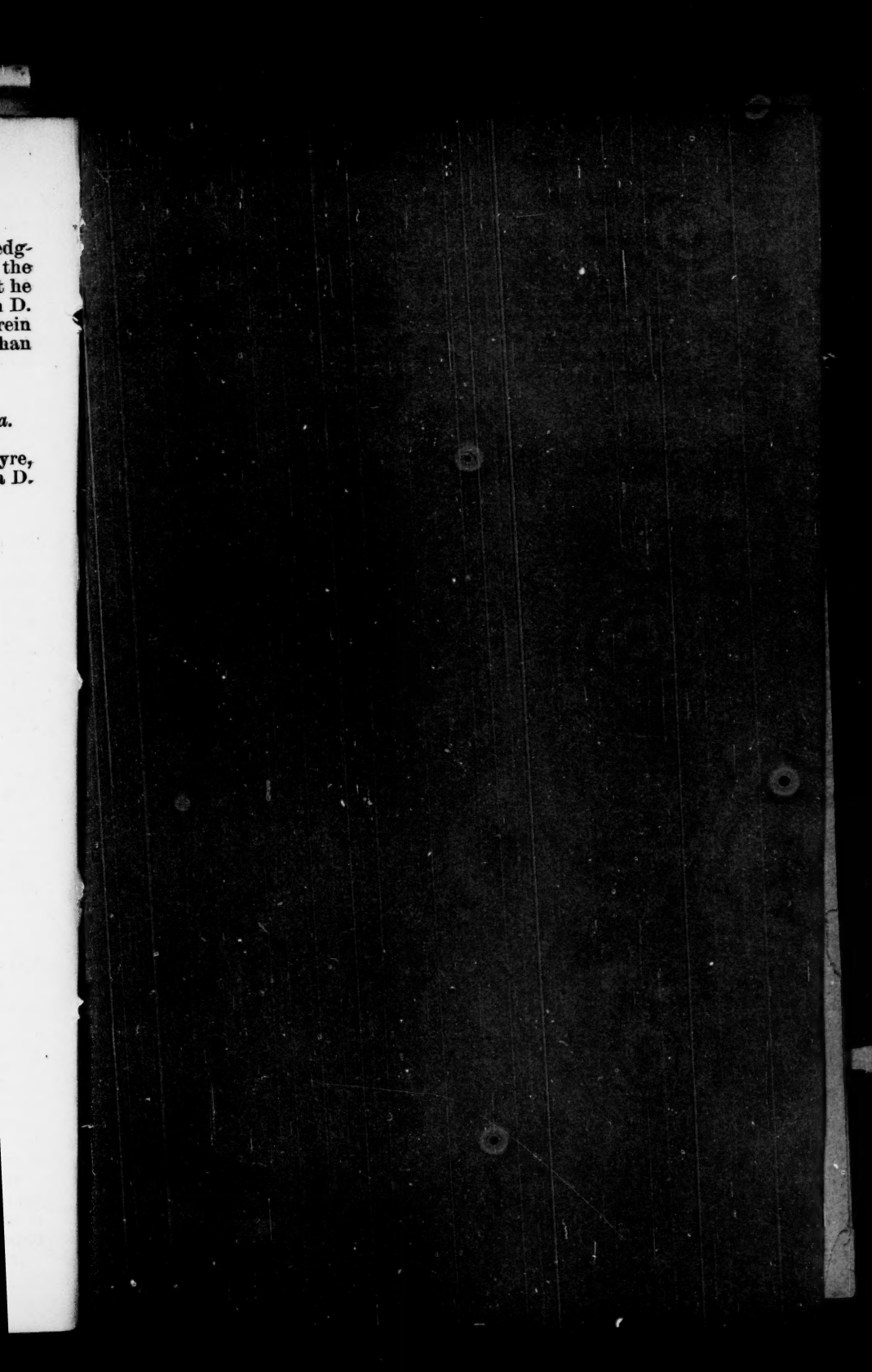
On this 18th day of October, A. D. 1869, personally appeared Hedgman Slack before me, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, and made oath that he delivered on this day a true copy of the within citation to Gideon D. Camden, esq., attorney of records for Lot M. Morrill, in a suit wherein Lot M. Morrill is defendant in error and James Armstrong, Jonathan Hyres, and Jesse Carney are plaintiffs in error.

Given under my hand this 18th day of October, 1869.

[SEAL.] JASPER Y. MOORE,
Clerk D. C. U. S. for Dist. West Virg'a.

(Indorsement on cover:) No. 280. James Armstrong, Jonathan Hyre, & Jesse Carney, plaintiffs in error, vs. Lot M. Morrill. West Virginia D. C. U. S.

Filed 6th November, 1869.



Supreme Court

OF THE UNITED STATES,

December Term, 1870.

JAMES ARMSTRONG AND OTHERS,

Plaintiffs in Error,

vs.

LOT M. MORRELL.

APPELLANTS' BRIEF.

SMITH & EVARTS

for Appellants.

NEW YORK:
EVENING POST STEAM PRESSES, 41 Nassau St., cor. Liberty.
1870.

Evening Post Steam Presses, 41 Nassau St., cor. Liberty N. Y.

Supreme Court

OF THE UNITED STATES.

DECEMBER TERM, 1870.

JAMES ARMSTRONG and others,
Pltffs. in Error,

vs.

LOT M. MORRELL.

The appellants will rely on the following propositions and authorities.

As relates to the construction of the Patent to Samuel M. Hopkins, dated July 1st, 1796, they will maintain:

First.—That the Patent by *its terms covers* all lands lying within its exterior boundaries, except such as come within the reservation contained therein; and that the burden was on the appellee to show himself within the reservation, which he wholly failed to do.

Second.—That only lands held by inchoate, equitable title, not carried into grant when Hopkins' entry and survey were made, come within the reservation;

and if the *terms* of the reservation had authorized the inclusion of any lands previously patented (which we deny) in order to make up the quantity purporting to be reserved, viz., 227,460 acres—there was no evidence showing the land in controversy was part of it, but all the evidence tended to show the reverse.

Third.—That lands lying within the exterior boundaries of the Hopkins' grant, which had been patented prior to Hopkins' entry, survey and grant, would, upon becoming forfeited to the State of Virginia by virtue of the Act of 27th February, 1835, inure to and vest in the owner of the Hopkins' Patent, provided such owner had complied with the other conditions mentioned in said Act.

Fourth.—The appellee having put in evidence the Plats and Reports of Surveyor Park, made in the cause under an order of the Court, with accompanying documents—among which is a copy of the patent to Hopkins, as well as plat and patent to Gallatin, through which he claims, and proved the latter's title to have been forfeited to the State of Virginia, November 1st, 1836—he is concluded from controverting any facts such evidence proves; and upon his own showing, has no case—Watson, as was proved, having done all the Statute required to entitle him to the benefit of the forfeited title.

Fifth—We shall also maintain that upon the appellee's own showing the 1,500 acres in controversy is indispensable to make up the 200,000 acres Hopkins bought and paid for, and on which he and his assigns have always paid the taxes; and moreover that the Surveyor of Kanawha County, who made Hopkins' survey, did *in fact* include the land in controversy in the 200,000 acres he allowed to Hopkins, and not in the reservation; which fact gave to Hopkins and his assigns an equitable title at least, against the State, to the land in controversy—which secures it to the appellants by the proviso

in the Act of February 12th, 1844, which authorized Dundas and Kugler to redeem, unless the appellee showed, affirmatively, that Watson and his assigns got the 200,000 acres without it—which the appellee failed to do.

Sixth.—We shall confidently submit that it follows as a necessary consequence that the three instructions asked for by the appellants, and refused by the Court below, on this branch of the case, were right, and should have been given to the jury; and that the instructions marked D. and E., given by the court below in lieu, were wrong; that marked D , because it assumed, as matter of law, to instruct the jury that 227,460 acres *were reserved absolutely* by the patent to Hopkins irrespective of the actual quantity then in fact held by inchoate equitable titles, coming within the *terms* of the reservation. *Second*: Because it assumed to instruct the jury, as matter of law, that the reservation did include lands appropriated and *granted* by the Commonwealth prior to Hopkins' entry, survey and patent; that the patentee, Hopkins, and his assigns had already gotten all the land they were entitled to, or paid taxes on, and by necessary implication, that such reservation included the land in controversy,—"Inasmuch," (using the language of the Court below) "as it *appears* that the patentee gets all the lands he paid for, or for which he is chargeable with taxes, and otherwise, that this instruction is confused, foreign to the issue and facts of the case, and *did mislead* the jury. And that marked E. is clearly erroneous; 1st, because it submits to the determination of the jury the question whether or not the patent to Hopkins *covered* and *included* in its terms the land in controversy, which determination necessarily involved an interpretation of the langnage of the patent, which was purely matter of law, to be decided by the Court; and if the *terms* of the reservation *exclude* lands patented before the date of the entry, survey and grant to Hopkins, then such grant necessarily and by operation of law, covered and included the land

in controversy. 2d, Because it makes *bona fide* possession of the *whole* land in controversey indispensible to receiving the benefit of the forfeiture; whereas, such possession of "any part thereof" satisfies the requirement of the Act of 27th of February, 1835. 3d: Because it expressly excludes the defendants, claiming under Watson, from the benefit of the forfeiture of the Gallatin title, unless the patent to Hopkins actually covered and included the land in controversy, when the proviso in the Act of '44, permitting Dundas and Kugler to redeeem, secured such benefit to the holders, if they "otherwise" held by equitable title under the State—such equitable title to the land in controversy, the purchase and payment of the purchase money to the State by Hopkins, and payment of taxes and continued occupancy by him and his assigns since, would give to the appellants, unless shown that Hopkins and those claiming under him had gotten their 200,000 acres without it.

In support of the first proposition we cite Hopkins & Watson *vs.* Ward and others. 6 Mumf., 38.

In support of the *second* proposition we cite the following General Acts and Resolutions of Virginia, showing the condition of land titles in that State, especially in that portion west of the Allegany mountains, from her foundation in 1776 to 1800; and that the terms, "Claims," "Prior Claims," and "Claims to Unpatented Lands" were used as *synonymous*, and in contradistinction to lands that had been patented or carried into grant, which were also used as synonymous phrases. Resolution of the convention that formed her Constitution in 1776, 2nd Code Va. of 1819, p. 351; Act of October, 1777, reciting foregoing Resolution, &c., Ib. 351—2; Act of May '79, (at the same time Virginia established her Land Office,) for adjusting and settling the titles of "claimers to unpatented lands" under the present and former governments, &c., Ib. 354, and Sequiter; Act establishing her Land Office at the same session, Ib. 365; Act of October, '79, Ib. 376; Act of October, '79, amendatory to

"Act for Settling Titles of Claimers of *Unpatented* Lands," Ib. 379; Act of May, '80, time allowed to complete and return surveys, &c., Ib. 379; Act of October, '80,—amendatory of Act for settling titles of claimers, &c., Ib. 385; Act of March, '81, giving further time, &c., Ib. 387; Act of May, '81, amendatory to Act for settling titles of "claimers of unpatented lands," Ib. 388; Act of November, '81, extending time to obtain warrants, Ib. 392; Act of October, '82, giving further time for sale, Ib. 397; Act of October, '82, concerning titles of "claimers of unpatented lands," Ib. 397; Act of January, '83, extending time, &c., Ib. 40[illegible] of October, '83, directing to whom patents should [illegible] &c., Ib., 407; Act of May, '84, giving further time to enter certificates, &c, Ib. 414; Act of October, '84, fixing time to make surveys, &c., Ib., 417; Act of October, '84, extending time, &c., Ib. 418; Act of October, '84, amendatory to Act for settling titles of conflicting "claimers of *unpatented* lands," &c., Ib. 420; Act of '8[illegible] giving further time, &c., Ib. 422; Act of '85, extending time for surveying entries made on western waters, [illegible] 423; Act of '86, giving further time for entering certificates, &c., Ib. 426; Act of same year, extending t[illegible] for surveys of entries made on western waters, Ib. 4[illegible] Act of same year appointing commissioners to se[illegible] conflicting claims, &c., Ib. 430; Act of '87, giving [illegible] ther time to enter certificates, &c., Ib., 433; *Act, pas[illegible] June*, 1788, *authorizing the Governor to issue paten[illegible] the description of the patent in question*, Ib. 434, [illegible] November, '88, giving further time to return plats [illegible] certificates, &c., Ib. 435; Act of November 8th, [illegible] giving further time, &c., Ib. 438; Act on same [illegible] giving further time to return plats and certificates [illegible] lands on western waters, Ib., 438; Act of November [illegible] '91, giving further time, &c., Ib. 440; Act of Nove[illegible] 12th, '92, giving further time, &c., Ib. 441; Act [illegible] vember, '92, giving further time, &c., Ib. 442; [illegible] December 19th, '94, giving further time, &c., Ib[illegible] Act of November 3d, '95, giving further time, [illegible] 463; Act of December 28th, '95, amending th[illegible]

Acts concerning the Land Office, &c., Ib. 463, and Sequiter; Act of December 13th, '96, giving further time, &c., Ib. 467; Act of January 6th, '98, giving further time, &c., Ib. 468; Act of December 1st, '98 and of January 24th, '99, and also of January 28th, 1800, extending the time for owners of entries to make surveys, and also owners of plats and certificates on western waters to return the same, Ib. 470 and 471. These acts being *in pari materia*, are to be construed together, 1 Kent Com , 463, and cases referred to.

Also French *vs.* Loyall Company 5 Leigh 627, and ere referred to, showing these inchoate equitable equired the protection of such a reservation as is tained in the Hopkin's patent until the same was ried into grant, which the State could give, *but not erwards.* See also Morrison *vs.* Campbell, 2 Rand, showing that the incipient equitable title acquired ntry, or entry and survey, became merged and ex- ished by the issuing of the patent to Gallatin.

r showing it was the object of the Legislature to protection to these inchoate equitable titles, and y *conscientious scruples* on the part of the State in to selling her land *more than once*, that prompted roduction of the reservation in question, we refer her General Acts of her Legislature forfeiting for uency and non-entry, and prescribing the order and ions senior forfeited titles should vest in the hold- *successive junior* patents of the same land—com- in 1827, and contiued by Old Virginia and her r, to the present time. Act of Nov. 6, 1827, §§ Sup. Code '19, pp. 343 and 344; Act April 31, §§ 8, 9, and 10, Ib., pp. 349, 350; Act of 10th, '32, § 2, transferring forfeited titles with- ervention of the Court. Ib., p. 357; Act 27th of y, 1835, under which the forfeiture of Gallatin's place, §§ 2 and 3, Session Acts, Va., 1834, 5. March 15, 1838, §§ 16 and 20, session Acts . 21 and 22. By the latter, for the first time islation, evidence was required to be furnished

the Register that the lands for which a patent is sought had not been previously patented before he is authorized to issue the patent; Act of March 29th, '42, § 3, Session Acts of '42, p. , whereby previously required possion by junior patentee was dispensed with; Act passed February 12th, 1844, for the relief of Dundas and Kugler under whom the appellee claims. Session Acts '43 and '44, p. 108. Code of Va., 1850, chap. 114 §§ 1 and 2, p. 495; Act of 1852, §§ 1, 2 and 3. Session Acts 1852, p. 18, and 2d ed., Code, Va., 551; Code of W. Va., ch. 31, §§ 33 and 34; and amendatory Act passed March 4th, 1869. Session Act of W. Va., '6 p. 88, and *sequiter*, sec. 9.

Also, Blackstone Comm., vol. 1st, p. 87, and *sequiter;* and vol. 2d, pp. 379, 380—stating the six established rules for construing deeds and other writings, which when applied to the descriptive language of the reservation, necessarily *exclude* the land in controversy. Also, Worthington and al. *vs.* Hylyer and al., 4th Mass., 196. Language insufficient to pass title as against the grantor, would be less sufficient and adequate in a reservation where the burden is on the appellee, as in the present case.

We shall also further claim under this head that the form of the patent in question and Act of '88 in pursuance of which it issued, have already received the construction, we contend for, by the Court of Appeals of Virginia, which construction of a State law and form and effect of a patent relating to titles to her land, is binding upon this Court; Hopkins & Watson *vs.* Ward and others, before cited; Nichols and als. *vs.* Covey, 4th Rand., 365, also the rulings of Judge Brockenborough, who preceded the present District Judge on a similar patent in 1859, in the case of McFarland and als. *vs.* Miller & Lusher. See also the case of Kinna's heirs *vs.* Quarrier's heirs, 3 W. Va. R., 210, showing that such reservation applies only to existing inchoate, equitable titles, and not to lands patented and carried

into grant when the entry and survey for the inclusive patent was made.

That these decisions are binding on this Court.

Green, lessee, *vs.* Neil, 6 Peters, 291, and Cases there referred to.

The reservation, if intended to operate in favor of Gallatin, he being at the time a mere stranger to the state, would be void as to him—as the state possessed no interest in his land which she could retain or "hold in store" when she granted the patent to Hopkins. Co. Lit.. 48 a ; Vin. Abr. Title Reservation ; 4th Kent's Com., 468.

We shall further rely in aid, in the present case, of the construction contended for upon the following enactments of the Legislature of Virginia, showing, when viewed in connection with facts, appearing in the Record, that the Surveyor of Kanawha County, to whom alone the Act of '88 confided the ascertainment and deduction of all lands held by incohate, equitable titles, not carried into grant, found lying within the exterior boundaries of surveys he made—had no means of knowing or reason to suspect, that the land in controversy was not altogether vacant, when he made the survey for Hopkins, and could not, therefore, have, *in fact*, intended to include the same in the deduction or allowance made.

Henings' Statutes at large, Vol. 9, pp. 262, 263 & 420, creating Monongalia County, in 1776, : Ib., pp. 2 7, 421, creating Montgomery County, same year; Ib., Vol. 9, p. 420, creating Greenbriar County, in 1777 ; Ib., Vol. 11, p. 266–7, creating Harrison County, in 1784, *wholly out of Monongalia County ;* Ibid, Vol. 12, p, 670, creating Kanawha County, in 1788, *wholly out of Greenbriar and Montgomery Counties.*

These Acts show the land in controversey, never lay in either Monongalia or Harrison Counties, but in Greenbriar, and afterwards in Kanawha County, though it appears, from the Plat, it was surveyed by the surveyor of Monongalia County, *as lying in that county*, and Plat

there recorded: and was patented February 10, 1786, *as lying and being in Harrison County.* See, also, Act of May, '79, 1st Code, '19, page 328, sec. 32; and Act, 1788, Ib., 328, sec. 70, as to duties of surveyors and their deputies, &c. Also, Act of 1785—after the boundaries of Greenbriar, Harrison and Monongalia Counties had been settled, *and one year after* Gallatin's *entry* had *been surveyed*, requires the respective surveyors of these counties to exchange "entries" remaining *unsurveyed*, so the proper surveyor might make the surveys. See do., p. 421, chap. 44.

That the Court will take judicial notice of the Statutes before cited, 1st Greenlief Evidence, 6, and cases referred to. Also, express agreement in the Record by the parties, that the Court may do so. See Rec., p. 71.

In support of our *Third Proposition*, we shall rely upon the Acts cited under the 2nd head of our second proposition; also, Wild's Lessee *vs.* Serpel, 10th Grattan, 405; Staats *vs.* Board, Ib., 400; Hale *vs.* Bronson, Ib., 415; Levasser *vs.* Washburne, 11th do., 572.

In support of the *Fourth Proposition*, we rely upon the general principle, that a party introducing evidence, whether oral or written, is estopped to impeach it, though, under some circumstances, he may explain.

There is no explanatory evidence in the present Record. In fact the entire accuracy of Surveyor Parks' Plats and Reports was conceded by both parties at the trial.

In support of the *Fifth Proposition* we rely upon the facts appearing in the plat and certificate, and patent issued thereon to Hopkins; and on the proviso in the

Act of '44, permitting Dundas & Kugler to redeem, and other acts and facts before stated and referred to, in support of our 2d Proposition.

As regards the *Sixth Proposition*, we shall rely in addition to those already cited, on the following:

In support of our objection to Instruction D, Graham on New Trials 271; Harris *v.* Wilson, 7 Wend., 57; Hollister *v.* Johnson, 4 Ib., 639; Livingsworth *v.* Fox, 2 Bay, 520.

And in support of our objections to Instruction E: we cite Levy *v.* Gadsby, 3 Cranch., 180; Fowle *v.* Bigelow, 10th Mass., 384; McCoy *v.* Lightner, 2 Watts, 347; Welch *v.* Dusar, 3 Binn, 337; Denison *v.* Wirtz, 3 Sargent & Rawle, 372; Roth *v.* Miller, 15 Do., 100; and 4 Do., 270; Adams *v.* Betz, 1 Watts, 425; Doe *v.* Paine, 4 Hawks, 64; Cockrel *v.* McQuin, 4 Monroe, 69; Herly *v.* Morgan, 1 Dev. & Batt., 425; Waterman *v.* Johnson, 13th Pick., 261; Peyton *v.* Dickson, Peck., 148; Hart *v.* Johnson, 6 Ham., 87; Etting *v.* Bank of U. S., 11 Wheat., 59; Cherry *v.* Slade, 3 Murphy, 82; Carroll *v.* Norwood, 5 Har. & John., 163; Pennington *v.* Boardly, 4 Do., 458.

That possession of "any part" by himself or tenant was sufficient to entitle Watson and his assigns to the benefit of the forfeiture. Act of 27th February, 1835, sec. before cited.

And in support of our Third Objection—the proviso in the Act of '44, under which Dundas & Kugler redeemed, before cited, together with facts appearing in the Record.

As relates to the appellants' second ground of defence, namely, adversary possession, we shall contend—

First—That the continuity of adversary possession as against the prior owners was not broken by the forfeiture and vesting in the State, Nov. 1st, '36, and continuance till redeemed by Dundas & Kugler in '45.

Second—If it were broken, that it was restored upon the principle of *remitter* or relation upon the redemption by Dundas & Kugler. And if neither—

Third—That it was competent for the appellants to tack the adversary possession prior to the forfeiture to that subsequent to the redemption, in order to make out the fourteen years required by the statute to bar the action.

As regards the appellant's second bill of exceptions we shall contend that the writing purporting to be signed by Thomas Willing, was not competent evidence to go to the jury—it having none of the forms and requisites of a deposition, competent to prove his renunciation of the trust prior to the estates vesting, nor was it sufficient in law to divest him of the estate when it had once become vested.

There is also error in the form of the verdict. The Code of West Virginia requires that the jury shall find *for or against all* the parties to the record. The present verdict fails to find *at all* as to Dundas, Kugler and Tilghman, who were co-plaintiffs with Morrell. (See Code W. Va., Chap. 90, §§ 23, 24, p. 520; also Code Va., 1849, Chap. 135, §§ 23, 24, p. 561; also Patterson *v.* United States, 2d Wheat., 221; United States *v.* Keen, 1 McLain R., 429.)

That the errors before stated call for a reversal of the judgment, we refer further to Commonwealth *v.* Porter, 10th Metcalf, 276, 277 and *sequiter;* and Graham on New Trials, 271, 288, before cited.

SMITH & EVARTS,
For Appellants.

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court,

OF THE UNITED STATES.

JAMES ARMSTRONG and others
Plaintiffs in Error

vs.

LOT M. MORRILL,
Defendant in Error.

Brief of Plaintiffs in Error.

This was an action of ejectment brought in the court below (originally in the Western District of Virginia and, after the formation of the State of West Virginia, prosecuted in the District of West Virginia,) for the recovery of a trust of fifteen hundred acres of land by Lot M. Morrill and others, plaintiffs, against James Armstrong and others defendants.

The verdict of the jury was given for the plaintiff Lot M. Morrill above, against the defendants, for the land claimed, excepting thereout a parcel of forty acres, and judgment was given accordingly.

Rec., folios 20–22.

The defendants presented two bills of exception, which were duly signed and sealed and made a part of the record, and the questions for review by this Court, brought up by the writ of error, are presented by the exceptions.

The first bill of exceptions sets forth the derivation of the plaintiff's title, commencing with the survey and patent of the State of Virginia to Albert Gallatin, under date of February 10, 1786, and ending in the deed to the plaintiff, Lot M. Morrill, under date of December 1, 1854.

Rec., fols. 22–78.

It shows, also, evidence that the land in this patent to Gallatin is the land in controversy, and that the defendants were in possession thereof, or claimed title thereto, at the commencement of this suit.

Rec., fol. 113.

This bill of exceptions then shows the derivation of the defendants' title, commencing with a survey and patent of the State of Virginia, under date of July 1, 1796, to Samuel M. Hopkins, of 200,000 acres of land and the derivation of the defendants' title therefrom, and possession under the same.

Rec., fols. 114–140.

The survey of Hopkins is for 200,000 acres, to which he is entitled upon certain land-office treasury warrants, and gives boundaries including a much larger area, closing with this statement, to wit:

"*An allowance of* 227,460 *acres is made in the calculation of area of this plat for prior claims included within boundary thereof.*"

Rec. fols. 114–116.

The Patent follows the boundaries of the survey in its grant of the 200,000 acres, and concludes as follows, to wit:

"But it is always to be understood that the survey upon which this grant is founded includes 227,460 acres, exclusive of the above quantity of 200,000 acres, all of which having a preference by law to the warrants and rights upon which this grant is founded, liberty is reserved that the same shall be firm and valid, and may be carried into grant or grants; and this grant shall be no bar in either law or equity to the confirmation of the title or titles to the same as before mentioned and reserved, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Samuel M. Hopkins (except as before excepted) and his heirs forever."

Rec. fols. 117–120.

This bill of exceptions then shows that the patent to Samuel M. Hopkins embraced within its exterior boundaries the entire tract of 1,500 acres claimed by the plaintiffs in this suit.

Rec., fol. 130.

This bill of exceptions also shows evidence of the possession of the land in controversy, by the defendants and those under whom they claim, and the payment of taxes and assessments thereon.

Rec., fols. 130–140.

This bill of exceptions also shows evidence of the forfeiture of the title under which the plaintiff claims to the State of Virginia, on or about November 1, 1836, the passage of a law by the State, in 1844, authorizing Dundas and Kugler, at one time holding the title, to redeem said land from the forfeiture, and their proceedings in redemption in 1845, subsequent to which title to the plaintiff Morrill, was derived from them.

Rec., fols. 62–83–88.

Law of Virginia of Feb. 13, 1844.

This bill of exceptions then sets forth the requests of

the defendants for instructions of the Court to the jury, and the actual instructions given with the exceptions taken to the refusals of the Court to instruct the jury as prayed, and to the instructions actually given.

Rec., fols. 140–145.

Points under First Bill of Exceptions.

First.—The plaintiff, to sustain his action, gave in evidence a patent of the Commonwealth of Virginia for 1,500 acres to Albert Gallatin, dated the 10th of February, 1786. He also offered evidence tending to prove the derivation of title for same land to Dundas and Kugler, Trustees of the North American Land Company. That the said land, under the laws of Virginia, became forfeited to the State, on or about 1st day of November, 1836, for non-entry on the Commissioner's books of the county where it was located. That in 1844 a law was passed authorizing Dundas and Kugler to redeem said land from forfeiture, which they did redeem in the year 1845. Evidence was offered tending to prove a derivation of title to Lot Morrill from said Dundas and Kugler, after redemption aforesaid.

Plaintiff also gave in evidence the patent of same Commonwealth: To Hopkins for 200,000 acres of land dated July 1st, 1796, as well as the derivative title for the same land to James T. Watson. This record shows that neither entry nor survey had been made for the 200,000 acre tract when the Gallatin patent was issued, the latter being nearly ten years before. The evidence tended to prove the 200,000 acre tract included in its boundaries the 1,500 acre tract. It also tended to prove that the taxes charged and chargeable on said 200,000 acres had been paid, by the holders thereof, as early as September, 1834, and afterwards up to 1840. There was also evidence tending to prove that the grantee

aforesaid, Watson, had actual possession of the 200,000 acres, or parts thereof, as early as 1827, and within the bounds of the 1,500 acre tract, and also without the same, claiming under his title aforesaid; which possession continued, without interruption, to the time of the trial.

The defendants also offered evidence tending to prove that the defendant James Armstrong took actual possession of 420 acres of the 1,500 acres aforesaid, the land in controversy, on the 1st of January, 1833, claiming and holding the same under title bond from Mariah Nixon and others, dated 19th of December, 1832, and that such possession had continued ever since.

Second.—The defendants, thereupon, requested the Court to give the following instructions to the jury, which were refused.

First.—That the reservation in the patent to Samuel M. Hopkins, dated July 1st, 1796, was of lands the titles to which were inchoate and not of lands which had been granted by patent previous to the date of Samuel M. Hopkins' survey and entry.

Second.—That said patent to Samuel M. Hopkins covered all lands lying within the exterior boundaries of his survey, for which patents had issued previous to his entry, survey and patent, and became a junior grant to that issued to Albert Gallatin, and under which the plaintiffs in this suit claim.

Third.—That if the Jury shall believe, from the evidence, that James T. Watson was the owner of the land described in the patent to Samuel M. Hopkins at the time the land in controversy became forfeited to the Commonwealth as aforesaid; that he was on the 27th day of February, 1835, and up to the time of the for-

feiture, in the actual *bona fide* possession, by himself or tenant, of the land in controversy, or any part thereof, under the Hopkins patent aforesaid; and that said Watson had at the date of such forfeiture discharged all taxes and damages duly assessed and charged against him upon said land, and all such taxes and damages as ought to have been charged thereon against him, then the title of those under whom the plaintiffs claim, to the land in controversy, inured to and vested in the said Watson, and the plaintiffs cannot maintain this action.

Fourth.—If the jury are satisfied, from the evidence, that adversary possession commenced before 1st of November, 1836, and the same possession continued during the time of the forfeiture, as well as from the 8th May, 1845, the time of redemption, up to the time of the institution of this suit, and by adding the time of adversary possession before forfeiture to the adversary possession after redemption makes a period of fourteen years, then they must find for the defendants, or such of the defendants as make out the fourteen years as aforesaid.

Fifth.—That the Act of 1844, which authorized Dundas and Kugler to redeem the lands therein specified, did not so operate as to relieve them from effect of the Statute of Limitations, which had commenced running for defendants before the forfeiture, for the time the land in controversy was so forfeited, if the jury believe the defendants continued their possession without interruption during the forfeiture, and up to the time of redemption; and that the defendants continued the possession to the time of the institution of this suit.

Third.—The first three instructions have reference

to the same legal question, and should be considered together. To understand the subject, a review of the land law of Virginia bearing on the question is necessary. By an act of Virginia, passed June, 1788, second Rev. Code, p. 434, leave was granted to a person having a survey, including in its bounds *prior claims* of others, to apply to the Governor for a patent according to the bounds of such survey, excepting in the patent all such prior claims. Such patents were numerous under that act, and became known to the country and the Courts as "inclusive surveys." For the form of the reservation adopted by the Executive of Virginia, reference is made to the patent of the Commonwealth of Virginia to Samuel M. Hopkins, in page 60 of the Record. That form is common to all inclusive grants. It will be contended by defendants that the exception necessarily excludes from its operation a patent which is older than the entry or survey on which the exclusive grant is founded.

It will also be contended that the words "prior claims," in the statute, refer to entries and surveys which precede a patent, and constitute only equitable or inchoate titles, which would be defeated by the first patent, giving the elder legal title, without the exception. No such exception is necessary to protect an existing patent. But the elder legal title protects itself. It is insisted by the defendants that the words "prior claims" used in the statute, had thus received, by prior use in Virginia legislation about lands, a distinct and definite application to equitable titles. See the following references to acts of Virginia, second R. Code, pages 34–8–9, 382–5–7–8, 392–7.

As a legislative exposition of these forfeiture laws, and inuring of title, reference is made to the following session acts passed; March 30th, 1827, Sup. 341; April 1st, 1831, Sup, 345; February 27th, 1835, sess. act page 12; act to extend time of redemption to 1st of November, 1836, sess. act of 23d of March, 1836, page 7; act of 30th March, 1837, page 9, extended time of redemp-

tion to 1st of July, 1838, the last general extension of time for redemption.

For judicial construction of these and other forfeiture laws, reference is made to the following cases: Wild *vs.* Serpel, 10th Grat. 406; Staats *vs.* Board, idem 400; Atkins *vs.* Lewis, 14th Grat., page 30, and various other decisions in Grattan's Reports.

These inclusive grants have been brought before the Supreme Court of Virginia, and have received its interpretation to this extent:

1st. That a reservation, if identified, does not pass by the inclusive grant.

2d. If the owner of the reservation fails to carry his inchoate title into grant, or forfeit it by time, it is liable to re-entry, survey and grant as other waste and unappropriated land, and the inclusive grant presents no obstacle to it.

3d. If the prior claim cannot be found and identified, then the inclusive grant embraces it and carries the title; for it embraces and holds all the land not within the exception. Hopkins and Ward, 6 Munf. 38, and Nichol and Covey, 4th Rand. 365.

If, as we earnestly contend, the Patent to Gallatin for the 1,500 acres of land, dated in 1784, nine years before the entry of the inclusive grant, is not within the exception, then Hopkins' patent secures to the patentee the same title to the 1,500 acres that a junior patent located on an elder patent would secure. It is a title well known and well understood in Virginia legislation. The whole of West Virginia was covered with large elder grants, and occupants under junior grants have been sedulously protected against such large unsettled surveys, on which elder grants have been issued; where these elder grants have been forfeited for non-payment of taxes and non-entry, the law casts the forfeited title on the junior grant. As the land of Hopkins or Watson

was not forfeited, the taxes paid and the land occupied, the forfeited Gallatin title, which is the land in controversy, inured to Watson and those holding under him as the junior grantee.

We therefore contend that the 1st, 2d and 3d instructions ought to have been given.

Fourth.—The defendants further insist that the Court erred in not giving the fourth and fifth instructions asked for.

The fourth instruction asks the Court to unite the adversary possession which occurred before forfeiture, with the possession after redemption. It is thought this falls short of the legal rights of the defendants. When time commences to run there is no law that stops it. But suppose it stops for the State, it does not follow that it stops for the defaulter. So far as it has run it is valid. After the redemption, the time run is also valid. Is it not just then to unite them? By the instruction the plaintiff gains the time of the forfeiture. But that gain, obtained by sheltering under the State, has no such merit as to avoid the valid time which precedes the forfeiture.

As to the fifth instruction, it is claimed to be good. If this was a suit with the State, or a purchaser from the State, the statute might not be a bar. But it is a suit between individuals, one of whom for a time had lost his estate by neglect of duty; yet, by the leniency of the Government, he is allowed to be remitted to his former estate without prejudice to his rights by the State. He pays taxes and redeems. He does not hold under the State, but under his own title, which he has redeemed. He pays no consideration to the State. He pays a debt for which the State held a lien on the land. He cannot and ought not to be permitted to thrust the State between him and the defendants.

Fifth —There is also error in the instructions actually given by the Court, and excepted to by the defendants, as follows :

(A.) The plaintiffs having offered in evidence the certificate of the Auditor of Public Accounts of Virginia, dated Februaay 22d, 1869, for the purpose of showing that the tract of 1,500 acres of land patented to Albert Gallatin on the 10th day of February, 1786, had been entered on the Commissioner's books in the name of Dundas and Kugler, and that the taxes had been assessed thereon and paid by the said Dundas and Kugler so as to entitle them to the benefits of an Act passed February 12th, 1844, by the General Assembly of Virginia. Upon this state of facts, the plaintiffs moved the Court to instruct the jury that the certificate must be held as conclusive respecting the entry of said lands, assessment of taxes, and payment thereof, unless disproved by evidence in the cause. Which was given.

(B.) To defeat a recovery in this cause under the Statute of Limitations, the defendant must have held unbroken and uninterrupted adverse possession of the premises in controversy for a period of fourteen years prior to the institution of this suit. To constitute such adverse possession, the defendant must have held possession of the premises by residence, improvement, cultivation, or other open, notorious and habitual acts of ownership for fourteen years previous to the institution of this suit. If the jury believe from the evidence that the defendant Armstrong was a resident and owner of a lot in the Town of Ripley, and in the immediate vicinity thereof he owned a tract of woodland, being part of the land in controversy, from which land, claiming it as his own, he, from the beginning of the year 1833, openly, notoriously and habitually cut and hauled his necessary supply of fuel, and also the timber necessary for the construction of various houses on his lot aforesaid; and also did cut and carry away saw-logs

and all the tan-bark which he used in his tan-yard on his lot aforesaid; and after three or four years use of it in that way, enclosed portions of said land, such acts and use are equivalent to adversary possession from the time such use commenced.

(C.) If the defendant Carney claimed title to the tract of land described in the declaration, or any part thereof, at the time of the institution of this suit, and the plaintiffs, or either of them, had the right to the possession thereof, this action may be maintained against him.

(D.) The grant to Hopkins, embracing within its exterior boundaries 227,460 acres of land, which is reserved and excepted to prior claimants, does not operate to divest them of their title, unless they fail to show themseves entitled to the land under said reservation; nor does the said grant pass any legal title to the grantee of lands so reserved and excepted by it, where the same have been previously appropriated and granted by the Commonwealth, inasmuch as it appears that the patentee gets all the lands he paid for, or for which he is chargeable with taxes.

(E.) To secure to the defendants, or those who claim under the Watson title, the benefit of the forfeiture of the Gallatin title, the jury must be satisfied that the Hopkins grant is the younger, covers and includes the land in controversy; and that Watson, and those claiming under him, were in the actual possession of the said land, claiming the same in good faith, having discharged all the taxes due the State, duly assessed and charged against said land, as well as all taxes that should have been assessed and charged against the same, from the date of the deed from Hopkins to Watson; otherwise the forfeiture of the Gallatin title would not, under the act of the General Assembly, passed in 183-, be transferred to the said Watson, or those claiming under him.

(F.) If the jury believe from the evidence that Watson, or those claiming under him, entered upon the 1,500 acres claimed by the plaintiffs in 1832, '3, 4', '5 or '6, and that the same became forfeited by the failure of the owners to enter the same upon the books of the Commissioner of the Revenue of the proper county, and pay the taxes properly chargeable thereon, the same became vested in the Commonwealth, by operation of law, on the 1st day of November, 1836, and the possession of the defendants upon the said 1st day of November, 1836, terminated, and the possession of the land passed into and remained in the Commonwealth until the same was transferred to James Dundas and Benjamin Kugler, by the act of the 12th of February, 1844; and the adverse possession acquired by the said defendants before the 1st day of November, 1836, cannot be connected with the adverse possession acquired by the defendants after Dundas and Kugler became revested with the title of the Commonwealth under the act passed for their relief on the 12th of February, 1844.

Sixth.—The first instruction A given by the Court for the plaintiff is objectionable in this: It declares a certificate given by the auditor, of conclusions derived from records in his office, as conclusive evidence, when it is not evidence. The record alone can furnish conclusive evidence. The certificate does not show what years the land was assessed, the amount of assessment, nor any other facts from which the accuracy of the certificate can be tested. The certificate on its face bears evidence that it was gotten up more to conceal than expose facts.

Instruction D.—There is a general objection to this instruction, arising from its want of precision in language, as well as in the legal propositions it is designed to announce. In the first part of the instruction it de-

clares the Hopkins grant does not divest prior claimants of their title, unless they fail to show themselves entitled to the land in the reservation.

It is not a question of title, but of identification. If it is identified as a reservation, then it is not included in the grant. If not identified, then the grant embraces it as land intended to pass by the grant.

The prior claimant may loose his title or claim, no matter by what cause, yet the reservation, if identified, still exists and forms no part of the inclusive grant. He who claims the reservation and seeks to withdraw it from the grant, has thrown upon himself the burthen of the identification. It may be the Judge intended in this part of the instruction to affirm this legal proposition.

The 2d clause of instruction D alleges that the inclusive grant does not pass legal title to the land reserved. Whether it passes a legal title or other title is not the question. As before stated, if identified nothing passes. If not identified, then it is intended to pass by the grant, but if it had been previously granted by the State, although a legal title could not pass, yet it would give color of title to sustain adversary possession, and also draw to it forfeited titles. It would create the condition of things common in West Virginia of a junior grant,—that is, a grant for land covered by an elder grant.

The instruction asserts that the inclusive grant does not pass legal title to lands reserved where they have been previously granted. The same thing would follow whether reserved or not. The oldest grant carries the legal title. Here follows the reason assigned by the Court for that opinion: "Inasmuch as it appears that the patentee gets all the land he paid for, or for which he is chargeable with taxes."

This reason is certainly erroneous. What authority had the Court to state this to that jury? It does not so appear in the evidence, nor was it proved. On the contrary, he does not get all he paid for, or for which he was so chargeable for taxes. It is an instruction as to the facts, not of law.

It is probable the Court intended to decide by the instruction that an inclusive grant excepts lands patented before the date of the entry, survey and grant of the inclusive patent. This same question was raised in the rejected instructions tendered by defendants. But the instruction is uncertain, as well as delusive. For reasons before given, instruction F ought not to have been given.

Second Bill of Exceptions.

The error here complained of relates to the admission of a particular piece of evidence, and cannot be more briefly stated than in this bill of exceptions itself.

Rec., fols. 146, 147.

Memorandum.—That upon the trial of this cause, the plaintiffs, to sustain the action on their part, gave in evidence a deed from Robert Morris and wife, John Nicholson and wife, and James Greenleaf, to Thomas Willing and others, dated on the 5th day of March, 1795, in the words and figures following, to wit: (This is the same deed referred to in the defendants' first bill of exceptions, and hereinbefore copied, together with all its certificates of acknowledgment, recordation, &c., annexed.) Also, the Act of February 12th, 1844, for the relief of James Dundas and Benjamin Kugler, passed by the General Assembly of Virginia, to be read from the act, and not copied. The plaintiffs, further to sustain their action, offered in evidence a paper purporting to be a disclaimer on the part of Thomas Willing, bearing date on the 19th day of December, 1806, in the words and figures following, to wit: (This is the same paper referred to in the defendants' first bill of exceptions, and therewith copied into this record.) And at the same time read the deposition of Charles N. Banker, and by a witness who identified said last mentioned

writing, purporting to be a a disclaimer, as the same paper spoken of in said deposition. Thereupon, the defendants objected to the said paper, as being insufficient as a disclaimer of title under the deed aforesaid, the same not being under seal; also to each and every part thereof not being necessary to make a disclaimer, and therefore not proper proof, the same not being on oath, but the mere declaration of Willing, and no part of the disclaimer aforesaid; and for other reasons apparent from the paper aforesaid, and the facts above recited. But the Court overruled the objections, and permitted said paper to be offered as evidence in the cause by the plaintiffs; to which opinion of the Court, admitting the paper aforesaid, and each, every or any part or parcel thereof, to be given in evidence to the jury, the defendants, by their counsel, except and pray that these their exceptions may be signed, sealed, and reserved to them, and the same is done accordingly.

Points under Second Bill of Exceptions.

First.—The paper was offered to supply the place of any deed in the plaintiffs' claim of title from Thomas Willing.

The conveyance of Robert Morris and others to Thomas Willing, John Nixon and John Barclay, in trust, vested the legal title in these grantees.

Rec., fol. 38.

A memorandum of Thomas Willing, not under seal, and dated eleven years after the above conveyance to him, declaring that as soon as he heard of the trust deed he refused to accept or act under the trust, was offered and received in evidence.

Rec., fol. 56.

It is apparent that this paper has neither the character of a *deed*, to reconvey the title once vested in Thomas Willing, nor of *testimony* to prove that he did not become a trustee.

The Court erred in permitting the pretended disclaimer of Willing to be given in evidence. As to this bill of exceptions there is a diminution of the record as to the recordation of the deed from Robert Morris and others to Willing and others.

There is a total omission of the certificate of recordation in the General Court, where the motion to record was made by Thomas Willing, and other grantees and indorsed on the deed (the original).

The paper offered was wholly worthless as a deed of disclaimer. It is not under seal, and it was made near eleven years after the deed was made.

It violates the record which shows he moved its recordation in Court.

It contradicts his act of paying and taking a receipt for the purchase money as indorsed on the deed,

It was not competent after the lapse of so many years to repudiate a deed.

The plaintiff gave a receipt and recordation in evidence and cannot repudiate the evidence.

Points as to Form of Verdict.

First.—There is also *error* apparent upon the record, in the form of the verdict.

The Code of West Virginia requires that the jury shall find *for or against all the parties* to the record.

The verdict in the cause contains no finding as to Dundas, Kugler and Tilghman, who were co-plaintiffs with Morrill.

Rec., fol. 21.
Code W. Virginia, §§ 23-24, p. 520.
Code Virginia (1849), Ch. 135, §§ 23-24, p. 561.

Patterson *vs.* United States, 2 Wheat., 221.
United States *vs.* Keen, 1 McLean, 429.

Last Point.—For these errors raised on the two bills of exceptions, the judgment below should be reversed and a new trial ordered.

BENJAMIN H. SMITH,
S. A. MILLER,
Attorneys for Plffs. in Error.
WM. M. EVARTS,
Of Counsel.

MEMORANDUM OF CERTAIN STATUTES OF VIRGINIA REFERRED TO IN THE RECORD.

Act of Feb. 27, 1835; Session Acts of Virginia, 1834–5, §§ 2, 3.

This Act forfeits for *non-entry* lands *off* the Commissioners' books that shall not be duly entered by the owners, charged with taxes properly due, and these paid on or before July 1st, 1836. The third section reads thus:

"That all right, title and interest which may hereafter be vested in the Commonwealth by virtue of the provisions of the section of this Act next preceding herein, shall be transferred and vested in any and every person or persons (other than those for whose default the same have been forfeited, and their heirs or devisees), who are now in possession of said lands, *or any part or parcel* of them, for so much thereof as they have just title or claim to, legal or equitable, *bona*

fide claim held or derived under grants from the Commonwealth, dated prior to April 1st, 1831 who shall have discharged all taxes duly assessed and charged against her, him or them upon such lands and all taxes that ought to have been assessed and charged thereon from the time when he, she or they acquired his, her or their title thereto, whether legal or equitable." By virtue of this Act, the land in controversy became forfeited and vested in the owner of the Hopkins patent. Another Act extends the time for complying with the requirements of the preceding Act to November 1st, 1836.

Act of March 23, 1836.
Session Acts, 1835–6.
Act of Feb. 12, 1844.
Session Acts, 1843–4, page 108.

This Act is for the relief of Dundas and Kugler, under whom the defendant in error claims. The second section has this proviso:

"*Provided*, however, that nothing herein contained shall be construed to deprive any persons having a *legal* or *equitable* title to these lands, by virtue of a subsequent grant from the Commonwealth, *or otherwise*, of his, her or their right, title or interest, *but the rights of such claimants shall remain the same as if this Act had never been passed.*"

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1870.

JAMES ARMSTRONG *et. al.*, PLAINTIFFS IN ERROR,

vs.

LOT M. MORRILL.

SCHEDULE OF THE LAND LAWS OF VIRGINIA AND WEST VIRGINIA REFERRED TO IN THE BRIEF OF THE PLAINTIFFS IN ERROR.

As relating to the patent to Samuel M. Hopkins, and construction of the reservation contained therein, the following:

And first the act on which the patent was founded.

THE LANGUAGE OR SUBSTANCE OF THE PARTS RELIED ON.	DATE.	WHERE FOUND.
An Act to authorize the Governor to issue certain Grants.		Va
"Whereas sundry surveys have been made in different parts of the Commonwealth, which include in the general courses thereof, sundry smaller tracts of *prior claimants*, and which in the certificates granted by the surveyors of the respective counties, *are reserved to such claimants;* and the Governor or Chief Magistrate is not authorized by law to issue grants upon such certificates of surveys; for remedy whereof,	1788. June 2.	2 R. Cap. 434. C. 58.
1. Be it enacted by the General Assembly, That it shall and may be lawful for the Governor to issue grants *with reservation of claims* to lands included within such surveys, anything in any law to the contrary notwithstanding."		
For showing what was understood by the terms "prior claims" and "claims" in the act aforesaid, the following passed before and after the before mentioned Act.		
"Resolution by the Convention that framed her Constitution." Quieting actual settlers on "unlocated and unappropriated lands in Virginia, to which there is no other *just claim.*"	1776. June 24.	ib. 350. C. 1.

DATE.	WHERE FOUND.	
1777. October.	ib. 350. C. 2.	An Act of the Legislature for raising revenue refers to the before mentioned resolution in these words: Did "resolve that all such settlers upon unappropriated lands to which there was no *prior just claim*, should have the pre-emption or preference to a *grant* of such lands."
1779. May.	ib 354. C. 4.	"An Act for adjusting and settling the titles of *claims to* UNPATENTED lands under the present and former government, previous to the establishment of the Commonwealth's Land Office."

"1. Whereas the various and vague *claims to unpatented land* under the former and present government previous to the establishment of the Commonwealth's Land Office, may produce tedious and infinite litigation and disputes," &c., * * * "and it is just and necessary as well for the peace of individuals, as for the public weal, that some certain rule should be established for settling and determining the rights to such lands, and fixing the principles upon which legal and just *claims* shall be entitled to *sue out grants.*" The act then defines what claims or rights shall be considered valid, and provides for appointing boards of commissioners to settle the same agreeably to the prescribed rules. It declares all surveys on Western waters before June, 1778, by surveyors, approved by William and Mary's College, founded upon charter, importation rights duly approved and certified according to ancient usage; upon treasury rights for money paid the Receiver General, made before October 1763; upon order of Council or entry in Council Book, or warrant from Governor for military services, or proclamation by King or Governor—*good*—all others *void*—on waste and unappropriated lands. The certificates of these boards entitle the claimant to *sue out a grant.* It is clear from the entire purport of this act that the Legislature contemplated *inchoate equitable claims* only, and *not* lands already patented, or carried into grant.

1779. May.	ib. 365. C. 5.	An Act for establishing a land office and ascertaining the terms and manner of granting waste and unappropriated lands. The act prescribes three steps to be taken in order to acquire the *legal* title. First. After purchasing the warrant of the Treasurer, to make what is termed an entry with the surveyor of the county in which the land lies. *Second step.* This entry to be surveyed by such surveyor or his deputy within a specified time, or the entry becomes vacated, and plat and certificate made, which, third, the claimer delivers

	DATE.	WHERE FOUND.
to the Register of the land office, and obtains his patent or grant, which conveys the *legal* title and consummates the process—the two first steps giving but an inchoate, equitable title. Sec. 3d, p. 368, makes the certificate of the commissioners mentioned in the foregoing act, a substitute in certain cases for the Treasurer's warrant.		
"An Act for giving further time to officers and soldiers to ascertain their *claims* to land."		
"Whereas many officers and soldiers of the Virginia Line, now in the Continental service, have *claims* to lands on the Western waters, from settlements or improvements made thereon, and have it not in their power to attend a Commissioner appointed to adjust and ascertain such *claims*, within the time limited for that purpose; for remedy whereof they are allowed twelve months after discharge from the army to establish their *claims* before the county courts.	1779. October.	ib. 376. C. 7.
This Act is amendatory of the Act "for adjusting and settling the titles of *claimers* to *unpatented* lands."	1779. October.	ib. 379. C. 9.
"An Act giving further time to obtain warrants upon certificates for preemption rights and returning certain surveys to the Land Office, and for other purposes."	1780. May.	ib. 382. C. 11.
"An Act entitled 'An Act to amend an Act entitled an Act for adjusting and settling the titles of *claimers* to *unpatented* lands under the present and former Government, previous to the establishment of the Commonwealth Land Office.'"	October.	ib. 385. C. 13.
This Act provides relief to *claimers* who have been unavoidably prevented from establishing their *claims* before said Commissioners.		
This Act is amendatory of the Act giving further time to obtain warrants upon certificates upon preemption rights and return certain surveys.	1781. March.	ib. 387. C. 15.
This is amendatory of the "Act for adjusting and settling titles of *claimers* to *unpatented* lands."	May.	ib. 388. C. 17.
This is amendatory of the aforesaid Act giving further time to obtain warrants on certificates and return certain surveys.	November.	ib. 392. C. 21.
This is further amendatory of the same, continuing the time in which *all* surveys then made might be returned to the Register. This Act extends, also, the time of the Commissioners "for adjusting and settling titles of *claimers* to *unpatented* land."	1782. October.	ib. 397. C. 24.

DATE.	WHERE FOUND.	
1783. May.	ib. 401. C. 29.	This gives further extension of time to return plats and certificates of survey, &c.
October.	ib. 407. C. 32.	This Act provides on what condition grants may issue to certain holders of certificates issued by said Commissioners for adjusting, &c.
1784. May.	ib. 414. C. 35.	This revives and continues the rights of *all* holding plats and certificates of survey, to return the same to the Land Office and obtain patents.
October.	ib. 417. C. 39.	This provides that all entries heretofore made on the western waters, except those of officers and soldiers, shall be surveyed and plats and certificates returned before the 1st of February, 1786, and those thereafter made to be surveyed and returned within one year from the date of entry—otherwise vacated, and land subject to re-entry.
October.	ib. 418. C. 41.	This extends the time to enter certificates for settlement rights, and for locating warrants upon preemption rights till 1st of June, 1885.
October.	ib. 420. C. 43.	This explains the Act "for adjusting and settling titles of *claimers* to *unpatented* lands, &c.," and permits holders of Treasury warrants by caveat to contest the validity of certificates given by County Courts on preemption and settlement rights.
1785.	ib. 422. C. 45.	This revives and continues settlement and preemption rights.
	ib. 423. C. 47.	This Act repeals the existing law respecting entries of lands on the western waters, and provides that all inchoate rights shall remain valid, and the Surveyor of each county shall appoint a day and give notice when he will proceed to survey the entries, and if they fail to attend, the entries to be vacated, but their warrants to remain valid and be returned to the owners.
1786.	ib. 426. C. 49.	This revives and continues preemption and settlement rights.
	ib. 428. C. 50.	This extends the time to survey entries on western waters, and return plats two years from date and waives all forfeitures.
	29 ib. 430. C. 52.	This appoints Commissioners to settle and adjust conflicting *claims* within the limits of lands granted the Illinois regiment.
1787. Dec. 20.	433 ib. 432. C. 56.	This further continues preemption and settlement rights, giving till December 31st, 1788, and providing that all plats and certificates may be returned before that day.

	DATE.	WHERE FOUND.
This is the Act first hereinbefore quoted, and upon which the patent to Hopkins was issued.	1788. June.	ib. 434. C. 58.
"An Act for giving further time to the owners of surveys to return the plats and certificates thereof into the Land Office."	November.	ib. 435. C. 59.
An Act giving further time to the owners of entries on the western waters to survey the same and return plats thereof, and no entry to be forfeited.	Nov. 21,	ib. 435, C. 60,
An Act giving time to owners of entries on the western waters to survey the same. This Act gives two years from date and declares there shall be no forfeiture.	1790. Nov. 8.	ib. 438. C. 64.
"An Act for giving further time to the owners of surveys to return the plats and certificates thereof into the Land Office." This Act allows nine months further time, and section 2nd gives further time to enter certificates for settlement rights and for locating warrants upon preemption rights.	Nov. 8.	ib. 438. C. 65.
"An Act giving further time to the owners of surveys to return the plats and certificates thereof into the Land Office." This Act allows one year from the date of the Act.	1791. Nov. 7.	ib. 440. C. 68.
"An Act giving further time to the owners of entries on the western waters to survey the same." This Act gives two years from date.	1792. Oct. 12.	ib. 441. C. 70.
"An Act giving further time to the owners of surveys to return the plats and certificates thereof into the Land Office." This gives one year and five months from the month of July then next to return all Plats and certificates of survey.	Nov. 15.	ib. 442. C. 71.
"An Act giving further time to the owners of certain surveys to return the plats and certificates thereof into the Land Office, and a further time to the owners of entries on the western waters to survey the same." This act allows the farther time of one year from the 31st of December, then next, to return surveys, &c., made on western waters and for surveying entries two years from the first day of November, 1794.	1794. Dec. 19.	ib. 459. C. 77.
"An act giving further time to the owners of entries on western waters to survey the same." This gives one year from the 1st of November, 1796.	1795. Dec. 3.	ib. 463. C. 81.

[N. B. *Hopkins Treasury Warrants* for 200,000 acres, on which his survey was made, *bears date the 6th October*, 1795. *His entry of course was subsequent.* The survey deducting 227,460 acres for "prior claims" *is dated the 10th December*, 1795, and his Patent, July 1st, 1796. See plat and certificate, and patent.]

DATE.	WHERE FOUND.	
1795. Dec. 28.	ib. 463. C. 82.	This act amends the law in relation to the Land Office and inhibits the Register from receiving any plat and certificate dated *subsequent to January 1st*, 1796, which *manifestly* comprehends the rights of others.
1796. Dec. 13.	ib. 467. C. 85.	An Act giving further time to the owners of certain surveys to return the plats and certificates thereof into the Land Office, and a further time to the owners of entries on western waters to survey the same.
1798. Jan. 6.	ib. 470. C. 87.	An Act giving further time to the owners of certain surveys to return the plats and certificates thereof into the Land Office.
Dec. 21.	ib. 468. C. 90.	This Act gives further time to the owners of certain surveys to return plats, &c., into the Land Office.
1799. Jan. 24.	ib. 470. C. 91.	An Act allowing a further time to the owners of certain entries of lands to survey the same. One year from the 1st of November then last.
1800. Jan. 23.	ib. 471. C. 92.	An Act allowing a further time to the owners of certain entries of lands to survey the same. This extends the time for surveying entries, and also for returning plats and certificates to the 1st of June then next. There was no law extending these privileges further. *As showing the modes, conditions, and order the old State gave the elder or legal title upon forfeiture, to subsequent successive purchasers of the same land, called junior patentees or grantees, and also for showing that it was not to avoid her selling the same land more than once, that prompted her Legislature to insert the reservation in question, but solely for the purpose of protecting equitable "prior claims" as entries and surveys, and not lands patented or carried into grant before entry made for the inclusive patent.*
1827. Nov. 6.	Sup. R. Code p. 343, 344. § 3, 4.	This gives title forfeited for *non-payment of taxes* and vested in the President and Directors of the Literary Fund—an incorporated branch of the government—to *bona fide* occupants of said land under title from the State, legal or equitable, and who shall have paid all taxes with 10 per cent. interest due thereon prior to the 1st December, 1829.
1831. April 1.	ib. 349, 350. § 8, 9, 10.	This is the leading Act fixing the conditions on which lands forfeited for *non-payment* shall accrue, and disposing of them thereafter. The 8th section, after reciting the fact that much of the land then forfeited, and that was likely to be, was actually and *bona fide* occupied *in part or whole*, under *junior grants* from the State, and that it was reasonable and just the State should transfer the legal title when forfeited to

DATE. WHERE FOUND.

the extent of such occupant's junior grant, provided he should have paid all taxes charged to him, upon the land embraced in his patent, and provides a mode for transferring it through the intervention of her Courts.

This section modifies the previous Act in this particular: It vests the title from its *own vigor* without the intervention of a Court, in the person entitled by previous laws, and provides that where there are *successive junior grantees* of the *same land*, who have complied with the prescribed conditions, —they shall be left to the strength of their respective titles. This and subsequent Acts extend the time of future forfeitures prescribed by the preceding Act, to October 1st, 1834, when all lands returned delinquent for *non-payment of taxes* prior to April 1st, 1831, and not redeemed, become *absolutely* forfeited—though the privilege of redeeming is extended to July 1st, 1838. 1832. March 10. ib. 357. § 2.

This Act forfeits for *non-entry* lands *off* the Commissioner's books, that shall not be duly entered by the owners, charged with taxes properly due, and these paid on or before July 1st, 1836. The third section reads thus: "That all right, title, and interest, which may hereafter be vested in the commonwealth by virtue of the provisions of the section of this Act next preceding herein, shall be transferred and vested in any and every person or persons (other than those for whose default the same have been forfeited and their heirs or devisees), who are now in possession of said lands, *or any part or parcel of them*, for so much thereof as they have just title or claim to, legal or equitable, *bona fide* claim held or derived under grants from the Commonwealth dated prior to April 1st, 1831, who shall have discharged, all taxes duly assessed and charged against her, him or them upon such lands, and all taxes that ought to have been assessed and charged thereon, from the time when he, she or they acquired his, her or their title thereto, whether legal or equitable." By virtue of this Act the land in controversy became forfeited and vested in the owner of the Hopkins Patent. 1835. Feb. 27. Session Acts Virginia. 1834–35. § 2. 3.

This Act extends the time for complying with the requirements of the preceding Act to November 1st, 1836. 1836. March 23. Do. 1835–6.

Section first extends the privilege or right *to redeem*, whether forfeited for *non-payment of taxes* or *non-entry on the Commissioner's books*, till January 15th, 1838—with this proviso: "*Provided*, that such redemption shall in no wise affect the claim or title of any *bona fide* occupant claiming under a 1837. March 20. Do. 1837. Ch. 8, p. 9, &c.

DATE.	WHERE FOUND.	
		prior grant, whose rights are protected and secured under the provisions of the several acts which have heretofore passed upon the same subject, and are now in full force." This Act also provides for the appointment of commissioners to sell the forfeited lands that shall not be redeemed or that have not or shall not have become absorbed by the holders of junior grants.
1838. March 15.	Session Acts Virginia 1838. Ch. 8, p. 16. §1, 14, 20.	This Act extends the time for redemption to July 1st, 1838, with a similar proviso as to occupants under junior grants, as in the preceding act, and section 14th prohibits the commissioners appointed to sell, from meddling with such actual occupant's land. By the 20th section, for the first time, evidence is required to be furnished to the Register of the Land Office, that the land sought to be patented, is "waste, and unappropriated."
1842. March 29.	Do. 1842, §3.	By this Act previously required *actual occupancy* of the whole, or some part or parcel of the forfeited land, made essential by prior laws, is dispensed with and payment of taxes and title under prior grant only required to secure the benefit of the forfeited title, not before sold by the commissioners appointed under Act of 1837.
1844. Feb. 12.	Do. 1843-4. p. 108.	This Act is for the relief of Dundas & Kugler, under whom the defendant in error claims. The second section has this proviso: "*Provided*, however, that nothing herein contained shall be construed to deprive any persons having a *legal* or *equitable* title to these lands, by virtue of a subsequent grant from the Commonwealth, *or otherwise*, of his, her, or their right, title or interest; *but the rights of such claimants shall remain the same as if this Act had never been passed.*"
Code of Va., 1850.	Ch. 814. §1, 2, p. 485	Recognizes the same fact that the State had repeatedly sold the same lands to different persons, adopts the same mode of disposing of the older forfeited titles remaining undisposed of, and subjects any forfeited lands remaining undisposed of, to entry, survey and patent, as "waste and unappropriated" lands.
1852. April 12.	Session Acts '52, p. 18.	Recognizes the same fact and adopts the same policy.
1869. April 1.	Code W. Va. Ch. 31, §33,4.	Recognizes the same fact of *successive grants* by the old State; but Her Constitution puts a stop to future repeated grants, for the same land.

To show that the land in controversy did not lay in Monongalia county when the Surveyor of that county surveyed it in 1784, *for Gallatin, as lying thereon, and so recorded his plat*

DATE. WHERE FOUND.

and certificate; and that it did not lie in Harrison county, when Gallatin's patent issued in 1786, *describing it as lying in that county, but that it lie in Green Briar county, out of which and Montgomery county, the county of Kanawha was formed exclusively in* 1788, *and therefore there was no evidence to show to the Surveyor of Kanawha county when he made the survey for Hopkins in* 1795, *that the land in controversy was not vacant, and that he in fact included the same in the* 200,000 *acres allowed to Hopkins and not in the reservation.*

This Act created Monongalia county. 1776. Henning sts. at large. vol. 9, 262-3, 420. 421

This Act created Montgomery county. ib. 257, 261.

This Act created Greenbrier county, which lies between the two former—Monongalia lying on the Northeast and Montgomery on the Southwest thereof. 1777. ib. p. 490.

This Act created Harrison county, wholly out of Monongalia county. 1784. ib. vol. 11. p. 366-7.

This Act created Kanawha county, exclusively out of Greenbrier and Montgomery counties. 1788. ib. vol. 12. p. 670.

On reference to the patent to Hopkins it will be seen that it bounds Northerly on the Harrison county line, and describes the land embraced therein as lying wholly in Kanawha county. Gallatin surveyed his 1,500 acres as lying in Monongalia county, and so recorded the survey, and in his patent described it as lying in Harrison county.

This Act requires surveyors to keep a record of the surveys made by themselves and deputies, and once a year return lists thereof to Clerks of County Courts. 1779. May 1. R. C. 328, 332. Va s. 32

200

This Act, passed after the boundaries of Greenbrier, Harrison and Monongalia counties had been settled, required the surveyors of these counties to exchange entries and warrants, so the entries might be surveyed by the surveyor of the county in which the lands lie. Gallatin's entry had been surveyed a year before, and so of course his entry was not exchanged or sent to the Surveyor of Greenbrier county. There was no law requiring plats and certificates to be so exchanged. 1785. 421. Ch. 44.

120.

This section requires surveyors from whose counties new counties are formed, to deliver to the surveyors of such new counties unsurveyed entries, with the warrants, made on lands lying in such new counties. 1788. 338. Ch. 86, 270.

From these acts, when viewed in connection with Gallatin's plat and certificate, and patent, it will appear that the sur-

DATE.	WHERE FOUND.	
		veyor of Kanawha county, when he made the survey for Hopkins, December 10th, 1795, had no means of knowing that the land in controversy, then lying in the heart of a wilderness, was not vacant—was not "waste and unappropriated land."
		For showing the verdict in the present case erroneous, the following:
1850. Ju'y 1.	Code '50. p. 561. §23, 24.	This makes it the duty of the Jury to find for or against all parties to the suit, in actions of ejectment.
1869. April 1.	Code W. Va. p. 520, ch. 90. §23, 24.	Which re-enacts *verbatum* in this respect, the foregoing section of the Virginia Code.

Supreme Court of the United States.

No. 10.

JAMES ARMSTRONG, JONATHAN HIRES, and JESSE CARNEY, Plaintiffs in Error,

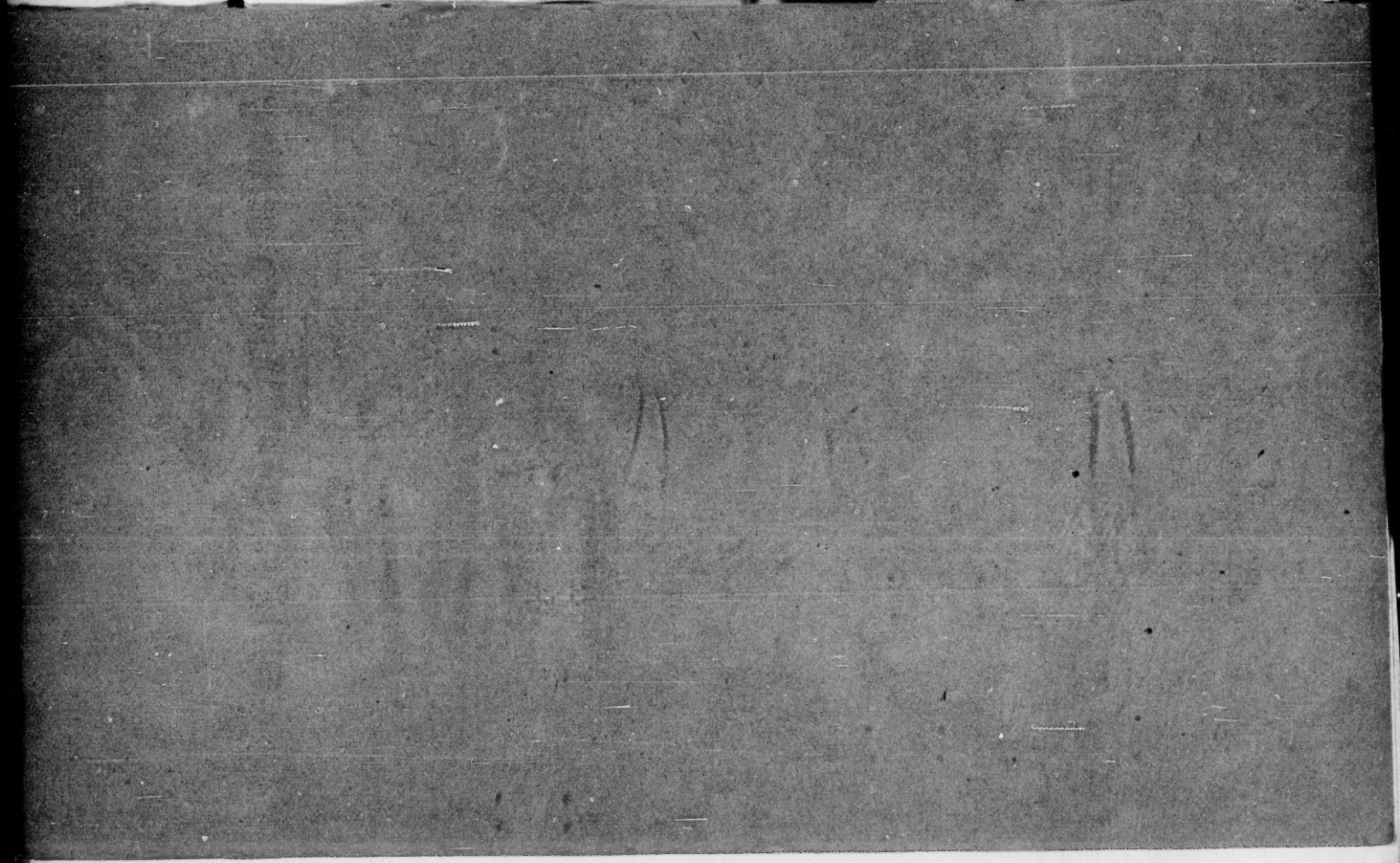
vs.

LOT M. MORRILL, Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

GIDEON D. CAMDEN.
Attorney for Defendant in Error.

McGill & Witherow, Printers 1107 E street, Washington, D.C.



Supreme Court of the United States.

JAMES ARMSTRONG, JONATHAN HIRES, and JESSE CARNEY, Plaintiffs in Error

vs.

LOT M. MORRILL, Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

This was an action of ejectment, instituted on the fifteenth day of April, 1857, in the district court of the United States for the district of West Virginia, having circuit court jurisdiction, by the defendant in error, Lot M. Morrill and James Dundas, and Benjamin Kugler, against the plaintiffs in error and Henry O. Middleton, to recover a tract of fifteen hundred acres of land, granted by the Commonwealth of Virginia to Albert Gallatin, by patent bearing date the tenth day of February, 1786, being lot No. 17 of a large connection of surveys granted to the said Albert Gallatin. (See page 1, printed record.) By leave of the court a count was added in the name of Wm. M. Tilghman. (See 6th page.)

THE PLEA was, not guilty. (See 9th page.)

The cause abated as to Henry O. Middleton, on the 20th April, 1868, by reason of his death. (See 9th page.)

Jury impanneled.

A jury was impanneled on the twenty-first day of April, 1869. (See 10th page.)

Verdict.

A verdict was rendered on the twenty-eighth day of April, 1869, in favor of the defendant in error, Lot M.

Morrill, for the tract of land in the declaration mentioned and described, except as to forty acres, covered by a patent to Jacob Starcher. (See 11th page.)

Judgment.

On the twenty-ninth day of April, 1869, the court rendered a judgment in pursuance of the verdict. (Same page.)

Exceptions of plaintiffs in error.

Upon the trial of the cause, the plaintiffs in error filed two bills of exceptions to opinions of the court. (See 12th page.) They were called 1st and 2d bills of exceptions. The 1st extends from page 12 to page 70; the 2d from page 70 to page 71.

Second bill of exceptions.

The 2d bill of exceptions, in fact, stands first in order, and in argument will be so considered on the part of the defendant in error. The defendant in error, to support the issue joined on his part, gave in evidence a deed from Robert Morris, John Nicholson, and James Greenleaf, to Thomas Willing, John Nixon, and John Barclay, conveying various tracts of land, including the land in controversy, in trust, for the benefit of the North American Land Company, (see 20th page of record;) also, an act of the Legislature of Virginia, for the relief of James Dundas and Benjamin Kugler, passed the twelfth day of February, 1844, which was agreed to be read from the act and not to be copied. (See 71st page same, and 108th page of vol. containing said acts.) And to further sustain his action, offered in evidence a paper writing, bearing date the nineteenth day of December, 1806, proved to have been executed by the said Thomas Willing, purporting to be a disclaimer on his part to accept or execute the trust deed aforesaid, which is as follows:

"I, Thomas Willing, of the City of Philadelphia, do hereby declare and make known unto all whom it doth or may concern, that immediately on my receiving notice that

Robert Morris, John Nicholson, and James Greenleaf had conveyed certain estates of land to John Nixon, John Barclay, and myself, in trust, for the North American Land Company, I did positively refuse to accept or act under the trust so intended to be created, and that I have at no time since accepted the said trust, or acted in anywise as trustee in relation thereto.

Witness my hand, this nineteenth day of December, one thousand eight hundred and six. THOS. WILLING."

(See page 31 of record.)

The only point raised by this exception to the ruling of the court was, was the said paper executed by the said Willing legal and proper evidence to go to the jury, as tending to prove that he declined accepting or executing the trust in said deed set forth, or for any other legal purpose? There can be no doubt but what it was competent to prove that the trust was declined upon the part of Willing, and it is respectfully submitted that it was proper to prove it by a formal deed executed by him, or any written or verbal declaration by him to that effect; and any evidence tending in the slightest degree to show that he declined the trust is proper to go to the jury, and unquestionably the paper signed by him tended to prove that he declined it. The exception to the ruling of the court is to the admission of the paper, and not to the force and effect of it. If the plaintiffs in error desired the opinion of the court upon that question, it should have been asked directly.

To sustain these views, reference is made to the following authorities:

Lewin on Trusts and Trustees, 225, vol. 24, Law Lib., 114.

Bonifant *v.* Greenfield, 1 Leonard, 60 Cro. Elizabeth, 80.

4 Leigh, 152, 16 Con., 219.

The law of Trusts and Trustees, by Tiffany & Bullard, 510, 532, 533.

Paramour *v.* Yardly, Plowd., 543.

Smith *v.* Wheeler, 2 Ventrez, 128.

Robertson *v.* Pett, 3 P. Wms., 251.

These authorities establish the doctrine, that the making of a trust deed, like the one under consideration, without being assented to, either expressly or impliedly, by the trustee, does not vest in him the title to the land mentioned in the deed, and that whilst it is the safer way for the trustee to renounce the trust by deed, yet it is, like all other facts, susceptible of proof in the ordinary way; and that, where there are more trustees in the deed than the one declining, the accepting trustees may sell the property, and make a perfect title to the purchaser; that a reconveyance by deed is necessary only where the title has vested by the acceptance of the trust on the part of the trustee.

First bill of exceptions, but in order second bill.

(See record, pages 12 to 70.)

This bill professes to give what the evidence offered by the parties tended to prove on the trial, and sets forth instructions, numbered from 1 to 5, inclusive, asked for by the plaintiffs in error, who were defendants in the court below, and the instructions given by the court to the jury. The instructions asked for are as follows:

Instructions asked for.

"*First.* That the reservation in the patent to Samuel M. Hopkins, dated July 1, 1796, was of lands the titles to which were inchoate, and not of lands which had been granted by patent previous to the date of Samuel M. Hopkins's survey and entry.

"*Second.* That said patent to Samuel M. Hopkins covered all lands lying within the exterior boundary of his survey, for which patents had issued previous to his entry, survey, and patent, and became a junior grant to that issued to Albert Gallatin, and under which the plaintiffs in this suit claim.

"*Third.* That if the jury shall believe, from the evidence, that James T. Watson was the owner of the land described in the patent to Samuel M. Hopkins at the time the land in controversy became forfeited to the Commonwealth as aforesaid; that he was, on the twenty-seventh day of February, 1835, and up to the time of the forfeiture, in the actual

bona fide possession, by himself or tenant, of the land in controversy, or any part thereof, under the Hopkins patent aforesaid; and that said Watson had, at the date of said forfeiture, discharged all taxes and damages duly assessed and charged against him upon said land, and all such taxes and damages as ought to have been charged thereon against him, then the title of those under whom the plaintiffs' claim to the land in controversy inured to and vested in the said Watson, and the plaintiffs cannot maintain this action.

"*Fourth.* If the jury are satisfied, from the evidence, that adversary possession commenced before 1st of November, 1836, and the same possession continued during the time of the forfeiture, as well as from the 8th of May, 1845, the time of redemption, up to the time of the institution of this suit, and by adding the time of adversary possession before forfeiture to the adversary possession after redemption, makes a period of fourteen years, then they must find for the defendants, or such of the defendants as make out the fourteen years aforesaid.

"*Fifth.* That the act of 1844, which authorized Dundas and Kugler to redeem the lands therein specified, did not so operate as to relieve them from the effect of the statute of limitations, *which had commenced running for the defendants before the forfeiture*, for the time the land in controversy was so forfeited, if the jury believe the defendants continued their possession without interruption during the forfeiture and up to the time of redemption, and that the defendants continued the possession to the time of the institution of this suit."

Which instructions the court declined giving, and in lieu thereof, and of instructions asked for by the plaintiff in the court below, (the defendant in error in this court,) gave the following instructions, A, B, C, D, E, and F:

Instructions given:

"A. The plaintiffs having offered in evidence the certificate of the auditor of public accounts of Virginia, dated February 22, 1869, for the purpose of showing that the tract of fifteen hundred acres of land, patented to Albert Gallatin on the 10th day of February, 1786, had been entered on the commissioner's books in the name of Dundas and Kugler, and that the taxes had been assessed thereon

and paid by the said Dundas and Kugler, so as to entitle them to the benefits of an act passed February 12, 1844, by the General Assembly of Virginia: Upon this state of facts the plaintiffs moved the court to instruct the jury that the certificate must be held as conclusive evidence respecting the entry of said lands, assessment of taxes, and payment thereof, unless disproved by evidence in the cause, which was given.

"B. To defeat a recovery in this cause, under the statute of limitations, the defendants must have held unbroken and uninterrupted adverse possession of the premises in controversy for a period of fourteen years prior to the institution of this suit. To constitute such adverse possession, the defendant must have held possession of the premises, by residence, improvement, cultivation, or other open, notorious, and habitual acts of ownership, for fourteen years previous to the institution of this suit. If the jury believe from the evidence that the defendant Armstrong was a resident and owner of a lot in the town of Ripley, and in the immediate vicinity thereof he owned a tract of woodland, being part of the land in controversy, from which land, claiming as his own, he, from the beginning of the year 1833, openly, notoriously, and habitually cut and hauled his necessary supply of fuel and also the timber necessary for the construction of various houses on his lot aforesaid, and also did cut and carry away saw-logs and all the tan bark which he used in his tan-yard on his lot aforesaid, and, after three or four years' use of it in that way, inclosed portions of said land, such acts and use are equivalent to adversary possession from the time such use commenced.

"C. If the defendant Carney claimed title to the land described in the declaration, or any part thereof, at the time of the institution of this suit, and the plaintiffs, or either of them, had the right to the possession thereof, this action may be maintained against him.

"D. The grant to Hopkins, embracing within its exterior boundaries two hundred and twenty-seven thousand four hundred and sixty acres of land, which is reserved and excepted to prior claimants, does not operate to divest them of their title, unless they fail to show themselves entitled to the land under said reservation; nor does said grant pass any legal title to the grantee of said lands so reserved and excepted by it, where the same have been previously appropriated and granted by the Commonwealth, inasmuch

as it appears that the patentee gets all the lands he paid for, or for which he is chargeable with taxes.

"E. To secure to the defendants, or those who claim under the Watson title, the benefit of the forfeiture of the Gallatin title, the jury must be satisfied that the Hopkins grant is the younger, covers and includes the land in controversy, and that Watson and those claiming under him were in the actual possession of the land, claiming the same in good faith, having discharged all the taxes due the State duly assessed and charged against said land, as well as all taxes that should have been assessed and charged against the same from the date of the deed from Hopkins to Watson; otherwise, the forfeiture of the Gallatin title would not, under the act of the general assembly, passed in 1835, be transferred to the said Watson or those claiming under him.

"F. If the jury believe from the evidence that Watson or those claiming under him entered upon the fifteen hundred acres of land claimed by the plaintiffs in 1832, '33, '34, '35, or '36, and that the same became forfeited by the failure of the owners to enter the same upon the books of the commissioner of the revenue of the proper county and pay the taxes properly chargeable thereon, the same became vested in the Commonwealth by operation of law on the first day of November, 1836, and the possession of the defendants upon the said first day of November, 1836, terminated, and the possession of the land passed into and remained in the Commonwealth until the same was transferred to James Dundas and Benjamin Kugler by the act of the 12th of February, 1844; and the adverse possession acquired by the said defendants, before first day of November, 1836, cannot be connected with the adverse possession acquired by the defendants after Dundas and Kugler became revested with the title of the Commonwealth under the act passed for their relief on the 12th of February, 1844."

The plaintiffs in error excepted to the ruling of the court refusing to give the instructions asked by them and in giving the instructions it did give to the jury.

The first inquiry arising upon the instructions asked for by the plaintiffs in error was, had they the right, from what the evidence tended to prove, to demand the opinion of the court upon the law propounded by the said instructions? It is respectfully submitted, that the plaintiffs in error had

not such right as to some of the instructions, particularly the 1st, 2d, and 3d, on the ground that the evidence did not tend to prove that they or those claiming under the Hopkins patent had paid taxes on the land in controversy, so as to entitle them to the benefit of the forfeiture under the act of 1835, provided the Hopkins patent covered it. For the evidence on that point see p. 64 of printed record.

The second question, arising upon the instructions asked for and given, was, whether the instructions as given gave to the jury the opinion of the court upon the questions of law asked for by the plaintiffs in error and arising upon what the evidence tended to prove, and, if so, was the law properly given.

The instructions given by the court, marked D and E, fully cover the questions of law arising upon the 1st, 2d, and 3d instructions asked for by the plaintiffs in error; and the instructions given by the court, B and F, cover the law arising upon the other instructions asked for by them.

In order to a proper understanding of the instructions given by the court, and to determine whether they were rightly given, it is necessary to see, from what the evidence tended to prove, the grounds of defence set up by the defendants in the court below. Two grounds were relied upon:

1st. That the land embraced by the patent of the tenth day of February, 1786, to Albert Gallatin, under which the defendant in error claimed, was, on the first day of November, 1836, forfeited and vested in the State of Virginia by force of the 2d section of the act of the Virginia Legislature, passed on the twenty-seventh day of February, 1835, entitled An act to further extend the time of redemption of lands and lots, returned delinquent for the non-payment of taxes, west of the Alleghaney mountains, and for other purposes, (see p. 12 of the Session Acts of 1835, Gen. Assembly of Va.,) for the failure of the owner of the land "to enter or cause the land to be entered on the books of the commissioner of the revenue, and have the same charged with taxes, &c.;

and that the patent to Samuel M. Hopkins, of the 1st of July, 1796, was for and embraced the land granted by the Gallatin patent, and, under the 3d section of said act, the title of the Commonwealth, acquired by the forfeiture, was transferred to and vested in the owners of the land embraced by the Hopkins patent, because it was a junior patent, and the land was in the actual possession of the owner, who had paid all taxes thereon, and was entitled to the benefit of the forfeiture under the act of 1835.

2d. Because the land in controversy had been held in actual adverse possession a sufficient length of time by the plaintiffs in error, and those under whom they claim, before the institution of this suit to bar a recovery.

On the part of the defendant in error it is respectfully submitted, that the court properly refused to give the instructions, numbered 1, 2, and 3, asked for by the plaintiffs in error, and properly gave the instructions D and E, as giving to the jury the law arising upon the first ground of defence.

Whether this ruling of the court was correct or not, depends upon the force and effect of the following proviso in the Hopkins patent, and the act under which it was issued: "But it is always to be understood that the survey upon which this grant is founded includes 227,460 acres, exclusive of the above quantity of 200,000 acres; all of which having a preference by law to the warrants and rights upon which this grant is founded, liberty is reserved that the same shall be firm and valid, and may be carried into grant or grants; and this grant shall be no bar, in either law or equity, to the confirmation of the title or titles to the same, as before mentioned and reserved." (Page 59 of printed record.)

The plaintiffs in error claim that said proviso only excludes from the operation of the grant the "lands within its exterior boundaries, the titles to which were inchoate, and not lands which had been granted by patent previous to the date of the Hopkins survey and entry." On the part of the defendant in error, it was and is contended that

said proviso or reservation excludes from the operation of said patent all lands held by others at the date of the survey on which the patent was founded, within the exterior bounds of the patent, whether the title had been perfected by grants or were only inchoate. That the patent should be construed as though the land had been surveyed, so as to exclude the prior claims from the exterior bounds of the patent of Hopkins; or, in other words, that the patent does not, for all legal purposes, cover or include the land embraced by the prior claims. The *habendem* clause of the patent, immediately following the said proviso in these words:—"to have and to hold the said tract or parcel of land, with its appurtenances, to the said Samuel M. Hopkins, (except as before excepted,) and his heirs forever"—shows most conclusively that the construction of said proviso, as claimed for it by the defendant in error, is correct. But, in order to a more perfect and satisfactory understanding of the force and effect of said proviso or reservation, reference is made to the series of land laws passed since the revolution, published in an appendix to the IId volume, Code of 1819, of the Laws of Virginia, commencing on page 350, and extending to page 483; and especially to an act passed in May, 1779, entitled An act establishing a land office, and ascertaining the terms and manner of granting waste and unappropriated lands. (2 Va. Code of 1819, page 365.) And also to the act passed in June, 1788, entitled an Act to authorize the Governor to issue certain grants, in vol. II of said Code, page 434, being the act which made it lawful to issue grants which included in their general courses tracts of prior claimants. And also to the act passed 28th of December, 1795, in the IId volume of said Code, page 463, repealing said last-named act. These various laws clearly show that, until the passage of the act of June, 1788, before referred to, it was unlawful to issue grants similar to that of Hopkins; and that it was only allowed because such grants were not to cover or apply to any prior claims within their exterior boundaries, and for all legal purposes were excluded therefrom.

It is respectfully submitted that this construction of said grants is not an open question. That it has been uniformly decided, as contended for by the defendant in error, by all the courts in the State of Virginia, under whose laws said grants were issued, and of the State of Kentucky, where similar grants were made; and that the courts of West Virginia have adhered to the same rule of decision, as also this court. The following authorities are referred to, to sustain the construction of said grants by the counsel of the defendant in error.

1817. Hopkins and Watson *v.* Ward and others, 6 Mun., Va., 38, decided that the land reserved in a grant under the act of 1788 is excluded from it.

1821. Madison's Heirs *v.* Owens, 6 Littell's Selected Cases, Ky., 281, same.

1826. Nicholas and others *v.* Covey, &c., 4 Ran., Va., 365, same.

1831. Lessee of Scott and others *v.* Ratliffe and others, 5 Pet. U. S. Supreme Court, 81, same.

1869. Kenna's Heirs *v.* Quarrier's Heirs, 4 W. Va. Reports, 211, same.

The case of Nicholas *v.* Covey is referred to particularly to show that, in the opinion of the court, prior claims held by *patents* within the bounds of the inclusive grants were excluded.

Hardman *v.* Boardman, 4 Liegh, Va. Reports, 377, decides that a patentee of lands may maintain a caveat against a subsequent locator to prevent him from covering his land held by a legal title with a younger patent.

The act of 6th December, (Code 1819, vol 2, 375,) against conveying or taking pretense titles, is referred to, to show how careful the Legislature has been to avoid conflict or difficulty in the titles of the lands in the State.

The Code of Virginia of 1849, page 558, is referred to, to show that, in addition to the right to caveat and prevent granted lands from being covered by other grants, but by action of ejectment to get rid of them when issued, al-

said proviso or reservation excludes from the operation of said patent all lands held by others at the date of the survey on which the patent was founded, within the exterior bounds of the patent, whether the title had been perfected by grants or were only inchoate. That the patent should be construed as though the land had been surveyed, so as to exclude the prior claims from the exterior bounds of the patent of Hopkins; or, in other words, that the patent does not, for all legal purposes, cover or include the land embraced by the prior claims. The *habendem* clause of the patent, immediately following the said proviso in these words:—"to have and to hold the said tract or parcel of land, with its appurtenances, to the said Samuel M. Hopkins, (except as before excepted,) and his heirs forever"—shows most conclusively that the construction of said proviso, as claimed for it by the defendant in error, is correct. But, in order to a more perfect and satisfactory understanding of the force and effect of said proviso or reservation, reference is made to the series of land laws passed since the revolution, published in an appendix to the IId volume, Code of 1819, of the Laws of Virginia, commencing on page 350, and extending to page 483; and especially to an act passed in May, 1779, entitled An act establishing a land office, and ascertaining the terms and manner of granting waste and unappropriated lands. (2 Va. Code of 1819, page 365.) And also to the act passed in June, 1788, entitled an Act to authorize the Governor to issue certain grants, in vol. II of said Code, page 434, being the act which made it lawful to issue grants which included in their general courses tracts of prior claimants. And also to the act passed 28th of December, 1795, in the IId volume of said Code, page 463, repealing said last-named act. These various laws clearly show that, until the passage of the act of June, 1788, before referred to, it was unlawful to issue grants similar to that of Hopkins; and that it was only allowed because such grants were not to cover or apply to any prior claims within their exterior boundaries, and for all legal purposes were excluded therefrom.

It is respectfully submitted that this construction of said grants is not an open question. That it has been uniformly decided, as contended for by the defendant in error, by all the courts in the State of Virginia, under whose laws said grants were issued, and of the State of Kentucky, where similar grants were made; and that the courts of West Virginia have adhered to the same rule of decision, as also this court. The following authorities are referred to, to sustain the construction of said grants by the counsel of the defendant in error.

1817. Hopkins and Watson *v.* Ward and others, 6 Mun., Va., 38, decided that the land reserved in a grant under the act of 1788 is excluded from it.

1821. Madison's Heirs *v.* Owens, 6 Littell's Selected Cases, Ky., 281, same.

1826. Nicholas and others *v.* Covey, &c., 4 Ran., Va., 365, same.

1831. Lessee of Scott and others *v.* Ratliffe and others, 5 Pet. U. S. Supreme Court, 81, same.

1869. Kenna's Heirs *v.* Quarrier's Heirs, 4 W. Va. Reports, 211, same.

The case of Nicholas *v.* Covey is referred to particularly to show that, in the opinion of the court, prior claims held by *patents* within the bounds of the inclusive grants were excluded.

Hardman *v.* Boardman, 4 Liegh, Va. Reports, 377, decides that a patentee of lands may maintain a caveat against a subsequent locator to prevent him from covering his land held by a legal title with a younger patent.

The act of 6th December, (Code 1819, vol 2, 375,) against conveying or taking pretense titles, is referred to, to show how careful the Legislature has been to avoid conflict or difficulty in the titles of the lands in the State.

The Code of Virginia of 1849, page 558, is referred to, to show that, in addition to the right to caveat and prevent granted lands from being covered by other grants, but by action of ejectment to get rid of them when issued, al-

though no possession be taken under them, but a mere claim set up to the land.

The other ground of defence which the evidence tended to establish, to wit:

The bar of adversary possession,

Set up on the part of the plaintiffs in error, depends upon the effect of the forfeiture of the tract of one thousand five hundred acres of land, called Gallatin's No. 17, under which the defendant in error claims, which vested in the Commonwealth of Virginia on the first day of November, 1836, under the act of the Legislature of that State, passed 1835, and continued so vested until the taxes upon it were paid by James Dundas and Benjamin Kugler, on the eighth day of May, 1845, pursuant to an act of said Legislature passed on the 12th of February, 1844, entitled "An act for the relief of James Dundas and Benjamin Kugler," when the title to said land under said last-named act vested in them. The plaintiffs in error, or some of them, took adversary possession of said land prior to the forfeiture, and continued to occupy it during the forfeiture, and after the redemption and transfer of the said Commonwealth's right to the said Dundas and Kugler, and up to the 15th of April, 1857, the time of the institution of this suit; but that such adversary possession before the forfeiture was not for fourteen years, the time then required by law to bar a recovery; nor did such adversary possession after redemption and before the institution of the suit amount to fourteen years.

On the part of the defendant in error, it is contended, that the court rightly refused the 4th and 5th instructions asked for by the plaintiffs in error, and rightly gave instructions B and F, as properly giving to the jury the law relating to this ground of defence. It seems to be generally conceded, that there can be no adversary possession against a State, and the court of appeals of the State of Virginia in several cases decided that there could be no

such adversary possession against the Commonwealth *of lands forfeited and transferred to it under the said act of* 1835; and it is most respectfully submitted, that there is nothing in this case to change that ruling. The land in controversy was forfeited in the ordinary way for omission to enter it for taxation on the commissioner's books under the act of 1835; and although Dundas and Kugler, in the act of 1844, before referred to, giving them the right to pay the taxes upon it and take the benefit of the forfeiture, style them as trustees of the North American Land Company, yet in fact the evidence tends to show that they acquired no right to it before. The deeds to them from Barclay and others (see page 34 printed record) being after the time they acquired title on the 8th of May, 1845, from the Commonwealth. (See Auditor's certificate, page 42 of same.)

Various cases, involving the question of forfeitures under the aforesaid act of 1835, have been before the supreme court of appeals of Virginia, and the decisions have been uniform that said act was constitutional; that all lands coming under its operation were absolutely forfeited on the 1st of November, 1836; that the title vested in the Commonwealth by force of the provisions of the act itself; and, whilst so vested, the statute of limitations did not run against the Commonwealth: and it is confidently claimed on the part of the defendant in error that it is not competent to tack the possession before and after the forfeiture, so as to eke out a period of fourteen years, to operate as a bar to the recovery; that, by the forfeiture, the adversary character of the possession was broken, and to work out a bar, its adversary character must be resumed after the title went from the Commonwealth to individuals, and the period from that time must be looked to as the commencement of an adversary possession against the new owners.

To sustain the views of the counsel of the defendant in error on this ground of defence, reference is made to the following authorities:

The act of the Virginia Legislature of the 30th day of March, 1837, p. 9, entitled "An act to amend and explain

the laws concerning western land titles, and for other purposes," is referred to, to show that fourteen years was the period fixed as a bar to a recovery where there was adversary possession.

1844. Taylor's Lessee *v.* Burnsides, 1 Grat., Va., 165. This is a leading case in Virginia on the bar of recovery by force of the statute of limitations. It decides what is adversary possession. It must be *exclusive*, *actual*, and *continued possession*.

The act of the Virginia Legislature, passed February 27, 1835, (p. 11, sec. 2,) forfeiting lands for the failure of their owners to enter them on the commissioner's books for taxation.

The act of the Virginia Legislature, passed February 12, 1844, (p. 108,) giving the benefit of the forfeiture of the land in controversy to Dundas and Kugler, and investing them with the title.

1853. Staats *v.* Board, 10 Grat., Va., 400.

1853. Wild's Lessee *v.* Serpell, same book, 405.

1853. Hale *v.* Branscum, same book, 418.

The three last recited cases were controversies respecting lands forfeited under the act of 1835, and in which it decided—

That the act was constitutional.

That the lands were absolutely and completely forfeited to the Commonwealth on the 1st November, 1836, by force of the act itself, and the title thereof divested out of the original owner.

That, after the forfeiture of the land to the Commonwealth, no possession thereof, *adverse to the proprietor in whose name it was forfeited*, could run against the Commonwealth, or those claiming under her.

Brenisfield *v.* Carter, 2 Kelly (Ga.,) 143.
Ringgold's Lessee *v.* Malott, 1 H. & John., Md., 299.
Hall *v.* Gittings, 2 H. & John., 112.

The three last cases are referred to not only to show that the land in controversy vested in the Commonwealth, and

while so vested the statute of limitations did not run, but that the possession, before the forfeiture and after the title to the land was transferred to Dundas and Kugler, could not be tacked, so as to eke out the time necessary to bar the recovery.

Instruction A given.

The court properly gave this instruction. It is in accordance with law. (See Code of Virginia, 1860, p. 722, sec. 5, and an act of the West Virginia Legislature, passed 28th February, 1866, entitled "An act in relation to evidence in actions involving the title to land.")

Instruction C given.

The court properly gave to the jury instruction C, under the provisions of chap. 135 Code of Virginia, 1849, which was the law of the case at that time, and is referred to as an authority on this point.

GIDEON D. CAMDEN,
Attorney for Defendant in Error.

NOVEMBER 28, 1871.

the laws concerning western land titles, and for other purposes," is referred to, to show that fourteen years was the period fixed as a bar to a recovery where there was adversary possession.

1844. Taylor's Lessee *v.* Burnsides, 1 Grat., Va., 165. This is a leading case in Virginia on the bar of recovery by force of the statute of limitations. It decides what is adversary possession. It must be *exclusive*, *actual*, and *continued possession*.

The act of the Virginia Legislature, passed February 27, 1835, (p. 11, sec. 2,) forfeiting lands for the failure of their owners to enter them on the commissioner's books for taxation.

The act of the Virginia Legislature, passed February 12, 1844, (p. 108,) giving the benefit of the forfeiture of the land in controversy to Dundas and Kugler, and investing them with the title.

1853. Staats *v.* Board, 10 Grat., Va., 400.

1853. Wild's Lessee *v.* Serpell, same book, 405.

1853. Hale *v.* Branscum, same book, 418.

The three last recited cases were controversies respecting lands forfeited under the act of 1835, and in which is decided—

That the act was constitutional.

That the lands were absolutely and completely forfeited to the Commonwealth on the 1st November, 1836, by force of the act itself, and the title thereof divested out of the original owner.

That, after the forfeiture of the land to the Commonwealth, no possession thereof, *adverse to the proprietor in whose name it was forfeited*, could run against the Commonwealth, or those claiming under her.

Brenisfield *v.* Carter, 2 Kelly (Ga.,) 143.
Ringgold's Lessee *v.* Malott, 1 H. & John., Md., 299.
Hall *v.* Gittings, 2 H. & John., 112.

The three last cases are referred to not only to show that the land in controversy vested in the Commonwealth, and

while so vested the statute of limitations did not run, but that the possession, before the forfeiture and after the title to the land was transferred to Dundas and Kugler, could not be tacked, so as to eke out the time necessary to bar the recovery.

Instruction A given.

The court properly gave this instruction. It is in accordance with law. (See Code of Virginia, 1860, p. 722, sec. 5, and an act of the West Virginia Legislature, passed 28th February, 1866, entitled "An act in relation to evidence in actions involving the title to land.")

Instruction C given.

The court properly gave to the jury instruction C, under the provisions of chap. 135 Code of Virginia, 1849, which was the law of the case at that time, and is referred to as an authority on this point.

GIDEON D. CAMDEN,
Attorney for Defendant in Error.

NOVEMBER 28, 1871.

6 Mass 578
13 Conn 227
24 Wend 201
1 Gallan 165
5 Sand 236
6 Sand 21

Evans
2 722 - Cook
consists of Negroes
sold contrary to
act - charge as to
a -